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THE
Revised Ordinances

OF THE
CITY OF DAVENPORT,

REVISED AND DIGESTED BY ORDER OF THE CITY COUNCIL,

CONTAINING

THE ORIGINAL AND AMENDED CITY CHARTERS,

With Notes and References to Judicial Decisions.

COMPILED AND ARRANGED BY

JOHN F. DILLON.

PUBLISHED BY AUTHORITY.

DAVENPORT, IOWA :
GAZETTE BOOK AND JOB PRINTING ESTABLISHMENT,
1866.



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Davenport

1866

PREFACE.

By resolution of the City Council, the undersigned was appointed to revise, re-arrange, codify, and index the Ordinances of the City of Davenport.

He has not deemed it his duty to question the *wisdom* or *expediency* of particular ordinances. This is a matter which is confided by the charter to the Council, and of which they, as practical men, can ordinarily form a better judgment than it is possible for any single individual to do.

He has deemed his duties to be chiefly of a *legal* nature. Existing ordinances have been consolidated and re-arranged. In a few instances, new ordinances, on subjects which appeared to require legislation, have been prepared by the undersigned and passed by the Council.

In re-printing the charter, the subsequent amendments have been incorporated into it in appropriate places, and repealed portions omitted. This saves space, and is believed to be an improvement and a convenience.

The notes and references to legal decisions in this and other States have involved considerable labor in their preparation, and it is hoped that they will be regarded as worth the limited space they occupy.

The *numbering* of the chapters in the former Revision has been retained, because it was familiar to those having occasion to use the ordinances. The numbers being retained has prevented an alphabetical or other classification of the ordinances; but this want of classification is believed to be supplied by the full Index which has been prepared.

It would not be just in the undersigned to close without testifying his respect for the patience, good judgment and conscientious care which have distin-

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guished the Mayor and each member of the Council in examining and passing upon the amendments reported to them, and upon the new ordinances which were framed under their special direction. And it will not be deemed invidious to observe that the interest taken from the first by the Mayor (the Hon. JOHN L. DAVIES), who has attended every meeting of the Council having the revision under consideration, is worthy of special mention, and merits the just praise and commendation of the public, whose interests he has been so zealous and effective in subserving.

By neither the Mayor or Council, or undersigned, is it claimed that the present work is perfect: it is only believed to be more so than that which it supercedes.

JNO. F. DILLON.

DAVENPORT, Sept., 1866.

LIST OF
MAYORS AND ALDERMEN

FROM THE FIRST INCORPORATION OF DAVENPORT
TO THE PRESENT TIME.*

1839.

RODOLPHUS BENNETT, Mayor.

TRUSTEES,

A. C. Donaldson,	Jonathan W. Parker,
D. C. Eldridge,	John Litch,
John Forrest,	John Owens.

FRAZER WILSON, Recorder.

JAMES M. BOWLING, Treasurer.

GEORGE COLT, Marshal.

1840.

JOHN H. THORINGTON, Mayor.

TRUSTEES,

John Forrest,	George L. Davenport,
Jonathan W. Parker,	Seth F. Whiting.
William Nichols,†	

FRAZER WILSON, Recorder.

JAMES M. BOWLING, Treasurer.

W.M. B. WATTS, Marshal.

1841.

JONATHAN W. PARKER, Mayor.

* Part of the records of the Council is missing, and part is very meagre, and this list is as full and accurate as it was possible to make it.

† Died during the year, and Council, Sept. 2, 1840, passed resolutions of respect to his memory. Strong Burnell was elected his successor.

TRUSTEES.

Harvey Leonard,	T. K. Mills,
J. M. Witherwax,	R. T. McLoskey,
Seth F. Whiting,	

JOHN POPE, Recorder.

JAS. M. BOWLING, Treasurer.

WM. B. WATTS, Marshal.

1842.

HARVEY LEONARD, Mayor.

ALDERMEN,

S. F. Whiting,	T. K. Mills,
Wm. McCammon,	Thomas S. Hoge,
John Evans,	J. M. Witherwax.

J. W. PARKER, Clerk.

JAS. M. BOWLING, Treasurer.

GILBERT B. MCKOWN, Marshal.

1843.

JAMES THORINGTON, Mayor.

ALDERMEN,

S. F. Whiting,	Wm. Inslee,
Thomas Dillon,	D. B. Shaw,
T. K. Mills,	T. S. Hoge.

J. W. PARKER, Clerk.

JOHN EVANS, Treasurer.

J. N. SNOW, Marshal.

1844.

JAMES THORINGTON, Mayor.

ALDERMEN,

B. F. Cotes,	John H. Morton,
D. B. Shaw,	S. F. Whiting,
James Hall,	Gideon Averill (part of
A. H. Miller,	term).

LEVI DAVIS, Clerk.
 JOHN EVANS, Treasurer.
 J. N. SNOW, Marshal.

1845.

JAMES THORINGTON, Mayor.

ALDERMEN,

Jas. Hall,	Timothy Dillon,*
D. B. Shaw.	John H. Morton.
R. Bennett,	

JOHN POPE, Clerk.
 JOHN EVANS, Treasurer.
 SAMUEL LYTER, Marshal.

1846.

JAMES THORINGTON, Mayor.

ALDERMEN,

S. F. Whiting,	A. A. McLoskey,
Geo. W. Alvord,	Wm. S. Collins,
John H. Morton,	A. H. Miller.

JOHN POPE, Clerk.
 JNO. EVANS, Treasurer.
 SAM'L LYTER, Marshal.

1847.

JAS. M. BOWLING, Mayor.

ALDERMEN,

Cheney Munger,	Jno. L. Davies.
D. C. Eldridge,	N. M. Rambo.
A. A. McLoskey,	C. M. Peck.

JAS. THORINGTON, Clerk.
 JNO. EVANS, Marshal.

1848.

JAS. M. BOWLING, Mayor.

* Deceased during his term, and resolutions of respect to his memory passed by the Council, Sept. 12, 1845.

ALDERMEN,

John L. Davies,	Hiram Price,
Cheney Munger (part of term),	John H. Morton,
Nathan M. Rambo,	Harvey Leonard (part of term).
Charles Lesslie,	

JAS. THORINGTON, Clerk.

JNO. EVANS, Treasurer.

SAM'L PARKER, Marshal.

1849.

JONATHAN PARKER, Mayor.

ALDERMEN,

John L. Davies,	James M. Bowling,
Wm. McCammon,	Wm. S. Collins,
Nath'l Squires,	Sam'l Lyter.

JAS. THORINGTON, Clerk.

JNO. EVANS, Treasurer.

L. J. CENTER, Marshal.

1850.

JAMES HALL, Mayor.

ALDERMEN,

Jas. O'Kelly,	N. Squires,
Thos. Herbert,	D. C. Eldridge,
Jonathan Parker,	Chas. Lesslie.

JAMES THORINGTON, Clerk.

JNO. EVANS, Treasurer.

L. J. CENTER, Marshal.

1851.

CHARLES WESTON, Mayor.

ALDERMEN,

H. Leonard,	N. Squires,
Jas. O'Kelly,	E. Cook,
Dr. E. S. Barrows,	H. Price.

A. F. MAST, Clerk.

L. B. COLLAMER, Treasurer.

PATRICK COURTNEY, Marshal.

1852.

JOHN JORDAN, Mayor.

ALDERMEN,

A. Weigand, John P. Cook,

H. Leonard, Hiram Price,

Nathaniel Squires, John Bechtel.

A. F. MAST, Clerk.

W.M. VAN TUYL, Treasurer.

SAMUEL PARKER, Marshal.

1853.

JOHN A. BOYD, Mayor.

ALDERMEN,

John Wicks (part of term), Wm. Gray,

J. P. Cook, Adam Weigand,

J. Kingerlee, George G. Arndt (vice

H. Price, Wicks).

R. K. ALLEN, Clerk.

J. DRAKE, Treasurer.

SAMUEL PARKER, Marshal.

1854.

JAMES GRANT, Mayor.

ALDERMEN,

H. Wilhelm, H. H. Smith,

C. J. H. Eyser, D. P. McKown,

G. G. Arndt, B. Atkinson,

E. A. Gerdtzen, Wm. Burris,

Ebenezer Cook, A. A. McLoskey,

B. B. WOODWARD, Clerk.

L. COLLAMER, Treasurer.

L. J. CENTER, Marshal.

1855.

ENOS TICHENOR, Mayor.

ALDERMEN,

G. C. R. Mitchell,	E. Cook,
G. G. Arndt,	A. A. McLoskey,
C. J. H. Eyser,	A. H. Owens,
E. A. Gerdzen,	Geo. E. Hubbell, (part of term,)
A. Corbin,	J. Lambrite,
D. P. McKown,	S. Saddoris.
H. Price,	
	B. B. WOODWARD, Clerk.
	W.M. VAN TUYL, Treasurer.
	SAM'L PARKER, Marshal.

1856.

G. C. R. MITCHELL, Mayor.

ALDERMEN,

John Schutt,	S. K. Barkley (part of term),
James O'Brien,	W. S. Collins (part of term),
C. J. H. Eyser,	S. Saddoris,
A. Smallfield,	J. Lambrite (part of term),
Austin Corbin,	T. S. Fullam (part of term),
Jas. M. Bowling,	
H. Price,	
Jno. Forrest,	
W. S. Kinsey,	

W.M. HALL, Clerk.

SAM'L SYLVESTER, Treasurer.

JNO. H. TAYLOR, Marshal.

1857.

GEO. B. SARGENT, Mayor.

ALDERMEN,

Jno. M. Cannon,	John Forrest,
-----------------	---------------

Edw. Jennings,	J. C. Washburn (part of term).
Aug. Smallfield (part of term),	A. Le Claire (part of term).
T. Guelich (part of term),	Geo. E. Hubbell (part of term).
H. Ramming,	J. O'Brien.
Jas. M. Bowling,	I. H. Sears.
F. Vollstedt,	Wm. Guy.
E. S. Barrows (part of term),	
	E. PECK, Clerk.

SAM'L SYLVESTER, Treasurer.

H. W. MITCHELL, Marshal.

1858.

EBENEZER COOK, Mayor.

ALDERMEN,

J. M. Cannon,	Geo. E. Hubbell,
I. P. Coates,	J. O'Brien,
T. Guelich,	I. H. Sears,
H. Ramming,	Rob't Christie,
A. Corbin (part of term),	H. H. Andressen (part of term),
Jas. McIntosh,	
J. Washburn,	Jas. Thorington (part of term),
T. H. Morley,	

H. KILBOURN, Clerk.

L. SCHRICKER, Treasurer.

JNO. BECHTEL, Marshal.

1859.

EBENEZER COOK, Mayor, (part of term.)

HIRAM PRICE (balance of term.)

ALDERMEN,

T. F. Holmes,	H. H. Andressen,
G. P. Ankerson,	Rob't Christie,
H. Ramming,	J. O'Brien,
H. B. Evans,	I. P. Coates.

J. A. Le Claire,	J. McIntosh (part of
C. A. Haviland,	term),
T. H. Morley,	S. Saddoris (part of term).
L. C. BURWELL, Clerk.	

1860.

JAS. B. CALDWELL, Mayor.

ALDERMEN,

H. Weinert,	J. O'Brien,
H. S. Finley,	J. Coulthart,
T. Guelich,	H. Ramming,
B. Peters,	C. A. Haviland,
C. S. Ellis,	J. A. Le Claire,
T. H. Morley,	H. B. Evans.

H. MITTELBUSCHER, Clerk.

1861.

GEO. H. FRENCH, Mayor.

ALDERMEN,

Jno. Schmidt,	Wm. Glasman (balance
Th. Guelich (part of	of term),
term),	Geo. L. Davenport,
Ch. Kauffman (part of	J. A. Le Claire,
term),	J. C. Parker,
Marsh Noe,	Wm. Renwick,
H. Ramming (part of	J. Coulthart,
term),	B. Peters,
P. J. Gillett,	H. Weinert.

H. MITTELBUSCHER, Clerk.

1862.

GEORGE H. FRENCH, Mayor.

ALDERMEN,

S. G. Mitchell,	Marsh Noe,
John Schmidt (part of	G. W. McCarn,
term),	Geo. L. Davenport,

Edward Jennings (balance of term),	Victor Huot,
Francis Ochs,	J. A. LeClaire (part of term),
Wm. Glasman,	W. Kelly (balance of term),
Henry Lambach (part of term),	James Cunningham,
John Wunderlich, (balance of term),	Wm. Renwick.
Thos. Dermody, Clerk (part of term).	
HENRY MITTELBUSCHER, (balance of term).	

1863.

JOHN E. HENRY, Mayor.

ALDERMEN,

Ernst Claussen,	Geo. W. McCarn,
J Coulthart,	Marsh Noe,
Jas. Cunningham,	Francis Ochs (part of term),
Geo. L. Davenport,	H. H. Andressen (part of term),
Samuel Hirschl,	Victor Huot,
W. G. Jones,	J. Wunderlich.
S. G. Mitchell,	

H. MITTELBUSCHER, Clerk.

1864.

ROBERT LOWRY, Mayor.

ALDERMEN,

G. M. Matthes,	John Hornby,
Samuel Hirschl,	Geo. L. Davenport,
H. H. Andressen,	M. C. Davis,
E. Claussen (part of term),	W. G. Jones,
E. Tegeler (part of term),	M. K. Parks,
Henry A. Runge,	J. Coulthart.
Marsh Noe,	

CH. KAUFFMAN, Clerk.

1865.

JOHN L. DAVIES, Mayor.

ALDERMEN,

C. H. Lage,	J. W. Crampton,
G. M. Matthes,	John Hornby (part of term),
H. H. Andressen,	Jno. S. Seymour (balance of term),
Carl Tegeler,	W. G. Jones,
H. A. Runge,	M. C. Davis,
T. W. McClelland (part of term),	James Coulthart,
Marsh Noe (balance of term),	H. Shiley.

Ch. KAUFFMAN,* A. C. BILLON, Clerks.

W. A. REMINGTON, Treasurer.

Wm. POOL, Marshal.

1866.

JOHN L. DAVIES, Mayor.

ALDERMEN,

C. H. Lage,	John S. Seymour,
G. M. Matthes,	O. S. McNeil,
H. H. Andressen,	M. C. Davis,
N. Kuhnen,	W. G. Jones,
A. Warnebold,	J. Coulthart,
Marsh Noe,	J. M. Frizzell.

D. B. NASH, Clerk.

W. A. REMINGTON, Treasurer.

Wm. POOL, Marshal.

* Deceased during term, and resolutions of respect passed by Council.

INTRODUCTION.

HISTORICAL SKETCH

OF THE

Origin, Development and Value of Municipal Corporations.

BY JNO. F. DILLON.

The agency of boroughs, towns and cities in the creation of the *third estate*; that is, of the right of the *people* to exercise political power, though not always recognized, has nevertheless been most important. Modern civilization, with its characteristic features of Order, Justice, Security and Popular Government, is largely due to the establishment of boroughs, towns and cities.

This subject has occupied the attention of some of the most gifted minds of the present day—*GUIZOT*, *MICHELET*, *SISMONDI*, and others—to whose pages we refer for a full and detailed discussion.

We propose briefly, in this introduction, to refer to the origin of cities, and to the powers, privileges and jurisdiction with which they are, in modern times, invested, noting the distinctive character of our American municipal corporations.

BABYLON, PHœNICIA, and EGYPT were long and early noted for their large and splendid cities; but amid their magnificent remains—the remains of the world's earliest

civilization—we find no evidence of their municipal history and organization; but we do find enough to teach us that they were the seats and centres of great wealth and power in the hereditary governing class, and that the *people*, who constitute the true wealth of modern cities, were at the absolute disposal of their masters, bound down and degraded by servitude.

“Monarchs and conquerors there
Proud o'er prostrate millions trod—
The earthquakes of the human race,
Like them, forgotten when the ruin
That marks their shock is past.”

The political power of GREECE resided, not in independent States, as is often supposed, but in a large number of free and independent *cities*, with districts of country attached to them. Each city was sovereign, and a citizen of one was a foreigner in the others. Accordingly the Grecian heart always glowed with fervor for his city, but rarely, except in times of great common danger, kindled with a love for his whole country.

Municipal corporations were familiar to the ROMAN law. “Ancient Rome, with her surrounding country,” says Dr. LIDDELL, (*Rome*, Ch. 27, Sec. 8,) “was a great corporate body or community, holding sovereignty over the whole of Italy” and the provinces.

Civic communities were divided into prefectures, municipal towns, and colonies.

Prefectures were governed by Prefects, and had no power of self-government. But in Municipal towns the citizens were members of the whole State, but retained the right of local administration in matters not concerning the State at large.

Colonies erected cities and these were called *municipia*. And GUIZOT justly observes that the history of the conquest of the world by Rome is the history of the conquest and foundation of a vast number of cities.*

* M. Guizot's Hist. Civ. Europe, 42.

These cities secured what the Roman arms had achieved, and thus became the efficient means of spreading civilization throughout the Roman world.

Coming down to the Middle Ages, we may observe that the establishment of the feudal system worked a great change in the condition of the towns. Before that these were the centers of wealth and population: the ruling class lived within them. After feudalism was established, the lords of the land lived in the country upon their estates. The town became part of the land of the lord, and subject to his despotic authority, oppression and pillage. But still the towns grew in size and wealth, and with these came influence and power.

The eleventh and twelfth centuries are distinguished by the struggles of the towns for their enfranchisement—for *charters* granting them rights and privileges.

The effect of this successful municipal struggle and enfranchisement has been well stated by the eloquent historian of the Emperor Charles the Fifth. Says Dr. ROBERTSON, treating of this subject: “The forming of cities into communities, corporations, or bodies politic, and granting them the privilege of municipal jurisdiction, contributed more, perhaps, than any other cause to introduce regular government, police and arts, and diffuse them over Europe.”*

Of a similar opinion is a distinguished statesman and philosophic thinker of our own day, who considers the establishment of *boroughs* or *towns* as one of the three fundamental elements and agents of modern European civilization.†

The history of the ITALIAN cities, Venice, Genoa, and Pisa, showing the manner in which they acquired their exemption from feudal oppression, is a most interesting theme, but one upon which it would scarcely be proper

* 1 Charles V, Sec. 1, and see 2 Kent Com., 271, note; 1 Hall, Midd. Ag., 665.
303; The People v. Morris, 13 Wend., 325, 334, per Nelson, J.

† M. Guizot Hist. Civil. Europe, Sec. 7; Hazlett's Trans. Bond's Ed., p. 125.

here to dwell. So in FRANCE and other countries cities in the Middle Ages, obtained charters protecting them from feudal bondage, and securing them privileges more or less important.*

The conquest of ENGLAND by William of Normandy was in A. D. 1066. The towns and cities were under the uncertain protection of the king or lord. Composed as they were of tradesmen and the lower classes, they were regarded by their feudal masters as having no political and few civil rights.

London was incorporated A. D. 1100 to 1125 (precise date not known), obtaining the right to choose certain local officers; but the right of local self-government was not in general conferred upon towns, boroughs, &c., until the time of King John, A. D. 1199 to 1216.†

Into the history of the growth of English towns and municipalities and of their acquisition of political power—of the grant of royal charters designed to check the power of the nobility—of the arbitrary proceedings of Charles II to obtain control over the corporations by depriving them of their charters through compliant judges—of the similar proceedings by *quo warranto* and *scire facias* against Massachusetts, Rhode Island, and Connecticut—of the restoration of the charters and chartered privileges under William and Mary, (A. D. 1690), we cannot enter, and merely cite the reader to some of the sources of information concerning these interesting subjects.‡

All of our AMERICAN cities, towns and counties are public corporations, full or *quasi*. They are all created by the legislature, and are usually endowed with power to legislate upon, decide and control local and subordinate matters pertaining to their respective organizations.

The number and freedom of these local organizations,

* Guizot Hist. Civ. France, Sec. XIX; Hallam Mid. Ag., Ch. IV; Prescott Hist. Fred. and Isabella, Introduction, Sec. 1, p. xlvi.

† 4 Hall Mid. Ag., Ch. 8.

‡ 1d. Vol. 2, Ch. 8; Hume Eng., Vol. 1, App. II; 3 Hall. Const. Hist., 52; Wells, on Munic. Corp., 8; 3 Macaulay's Eng., Ch. 15.

whereby political power is conferred upon the citizens of the various local sub-divisions of a State, all of whom have a right to vote, and thus regulate their own domestic concerns, constitute a marked feature in our free system of government.* In general, each road-district, each school-district, each city, and each county, is self-governed. These are, of course, subject to the legislature of the State, and their acts, so far as they affect private rights, are also the subjects of judicial cognizance and review. The policy of creating local public corporations for the management of matters of local concern, runs back to an early period in our colonial history.

The elective franchise in these "local republics" is not, as is frequently the case in England, a privilege dependent upon custom or usage, or confined to a select class; but is uniform and universal, extending to *all* of the citizens. Old Sarums and rotten boroughs are unknown.

The effect of this policy of establishing cities, towns, and districts of country into bodies politic and investing the citizens thereof with the power of self-government, has been most happy.

It has been noted by Chancellor Kent that one of the most philosophic and fair of foreign observers (M. De Tocqueville, in his *De la Democratie en Amerique*, vol. 1, pp. 64, 96), was much struck with the institutions of New England towns; and considered them as small independent republics in all matters of local concern, and as forming the principle of the life of American liberty existing at this day.†

"Local assemblies of citizens constitute the strength of free nations. Municipal institutions are to liberty

* "In all *quasi* corporations, as cities, towns, parishes, school-districts, membership is constituted by living within certain limits." Per Shaw C. J., Overseer of Poor, &c., v. Sears, 22 Pick., 122, 130. "When a man," says Mr. Justice Morton, Oakes v. Hill, 10 Pick., 333, 346, "removes into town, he becomes a *citizen* thereof, (if possessed of the requisite qualifications as to age &c., and if he remains the requisite length of time), whatever may be the desire of himself or the town."

† 2 Kent. Comm., 275 p.

what primary schools are to science; they bring it within the people's reach, they teach men how to use and how to enjoy it. A nation may establish a system of free government, but without the spirit of municipal institutions it cannot have the spirit of liberty.”*

The value of our system of municipal institutions to which we have thus alluded may be seen on comparing the political condition of the United States with that of the people of modern France—selected as a fair example of a government without municipal freedom. France is at present a highly centralized government. The State there is everything; the people, nothing. Municipal institutions with a democratic element, or with the power of independent local self-government, belong there to the past.

The central power governs and regulates everything. It provides amusements, constructs roads, bridges, internal improvements, controls trade, inspects manufactures—the only agency of the people is the poor privilege of paying the expense.

The effects of this system are thus stated in an able article published in the London Morning *Chronicle*, August, 1851. “Develop in the slightest degree a Frenchman's mental faculties, and he flies to a town as surely as steel filings fly to a loadstone. From all parts of France men of great energy and resource struggle up and fling themselves on the world of Paris. There they try to become great functionaries. Through every department of the Eighty-four, men of less energy and resource struggle up to the provincial capital. All who have, or think they have heads on their shoulders, struggle into town to fight for office which the government alone can confer. The whole energy and knowledge and resource of the land are barreled up in the towns—all between towns is utter intellectual barrenness.”

* M. De Tocqueville *Democ.* en Am., ch. 5.

Such are the withering effects of a centralized despotism.

How different with the decentralized system of government in the United States, where each local constituency chooses its own officers—each road district, school district, village, town, city, and county administers its own affairs by the people and for the people.*

To civil territorial divisions, with powers of local administration and the universal exercise of the right of suffrage, are due that liberty and protection to private rights and property which are characteristic of the best government in Europe (Great Britain), and the best in America—the United States.

After alluding to the antiquity of this system in England, Mr. Justice BROWN in the important case of *The People v. Draper* (15 N. Y. Rep. 532, 562) says : “Wherever the Anglo-Saxon race have gone, wherever they have carried their language and laws, these communities, each with a local administration of its own selection, have gone with them. It is here that they have acquired the habits of subordination and obedience to the laws, of patient endurance, resolute purpose and knowledge of civil government, which distinguish them from every other people. Here have been the seats of modern civilization, the nurseries of public spirit, and the centres of constitutional liberty. They are the opposites of those systems which collect all power at a common centre, to be wielded by a common will, and to effect a given purpose, which absorb all political authority, exercise all its functions, distribute all its patronage, repress the public activity, stifle the public voice, and crush out the public liberty.”

“The city corporations,” remarks a modern jurist, “which have grown up in modern times, are of infinite advantage to society; they bind men more closely together than does any other form of political association. But that which most remarkably distinguishes

*See *Barrett v. Brooks*, 19 Iowa Rep.

them from the close corporations which formerly existed, is the general spirit of freedom which has been breathed into them. More especially is this the case with town corporations in America, which are as different from those of England as the latter are from similar corporations in Scotland and Holland.”*

But the picture is not without its shadows. There are evils that are either inherent in our public corporations, or which so generally attend their administration as to favor the proposition that they are inherent, which greatly detract from their value. Some of the principal of these may be briefly indicated.

1. Men the *best fitted* by their intelligence, business experience and capacity, and their high moral character for local governors or counselors, are not always chosen.

2. Those chosen are too apt to merge their *individual conscience* in their corporate capacity. Under the shield of their corporate capacity, men daily do acts which they would never do as individuals. The public, as if to retaliate, act *towards* corporations in the same spirit. The notion, though not avowed, is by far too much acted upon, that all that can be obtained from a public, or indeed from any corporation, is legitimate spoil. Against these, men usually honest and fair in their dealings, do not scruple to make charges and to present bills which they would never think of doing against an *individual* debtor.

3. As a result of these circumstances, the administration of the affairs of our municipal corporations is too often apt to be both *unwise and extravagant*.†

But with all these drawbacks, our system of popular

* Per Grimke J., in Rosebaugh v. Saffin, 10 Ohio, 31, 36.

These effects are not confined to this side of the Atlantic. “It is a familiar fact,” says Mr. Herbert Spencer, “that the corporate conscience is ever inferior to the individual conscience—that a body of men will commit, as a joint act, that which every individual of them wou’d shrink from did he feel personally responsible.” Essays, No. VII, p. 261, Am. Ed., 1865. And see *Id.* Essay No. V for a description—perhaps too highly colored—of the workings of the English reformed municipal corporations.

municipal organization and administration must, on the whole, be admitted to be the best that has ever been devised. Any other conclusion would be equivalent to declaring that absolutism was better than democracy; that the few ought to govern the many; that the people are incapable of self-government; and that a representative system of government was a failure.

LIST OF ACTS INCORPORATING DAVENPORT.

1. Davenport was first incorporated by an act of the Legislature approved January 25, 1839, and entitled "An act to incorporate the town of Davenport."

2. This act was repealed by an act passed February 11, 1842, also entitled "An act to incorporate the town of Davenport." The vote of the citizens of the town was 72 for and 10 against the adoption of the charter of February 11, 1842. (See city records, March 14, 1842.)

3. And this last act was itself repealed by "An act to incorporate the *city* of Davenport," approved February 5, 1851, which, with the amendments thereto, passed January 24, 1853 (extending limits), January 22, 1855, and January 23, 1857, constitute the present organic law of the city. The original charter, with the amendments incorporated therein, is herewith printed.

4. On the 20th March, 1858, passed another act amendatory of the city charter (see Chapter 88 Laws 7 General Assembly), but this whole act was decided by the Supreme Court to be unconstitutional, on the ground that under the present constitution city charters cannot be amended by a *special* act. (*Ex parte Pritz*, 9 Iowa Rep. p. 30.)

CITY CHARTER

AND

AMENDMENTS.*

AN ACT to incorporate the CITY OF DAVENPORT, approved February 5, 1851.

ARTICLE I.

OF THE BOUNDARIES AND GENERAL POWERS.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa,* That the inhabitants of the town of Davenport, in the county of Scott, and State of Iowa, be, and they are hereby constituted a BODY POLITIC AND CORPORATE, by the name and style of the "CITY OF DAVENPORT," and by that name shall have PERPETUAL SUCCESSION, and may have and use a COMMON SEAL, which ^{Seal.} they may change and alter at pleasure.

[The existing boundaries of the city are those prescribed by the amendment to the City Charter approved

* EXPLANATION.—In this re-print of the Charter, the articles and sections are those of the original charter, except where the contrary is indicated.

ORGANIC LAW OF CITY.—The general law entitled "An Act for the incorporation of Cities and Towns," (Rev., Ch. 51, Art. 1), does not, except as therein specially provided, apply to cities such as Davenport, which owe their corporate existence to special charters, and which have never adopted the general law.

Burke v. Jeffries, 19 Iowa Rep., overruling *Whiting v. Mount Pleasant*, 11 Iowa Rep., 482.

Therefore, the city charter and its amendments constitute the organic law of the city of Davenport, together with certain general statutes which are made specially applicable to cities having special charters. Municipal corporations are at all times subject to legislative control: their powers may be enlarged or taken away at the pleasure of the legislature.

Morford v. Unger, 7 Iowa Rep., 82; *Birchard v. Bissell*, 11 Ohio St. R., 96.

January 23, 1857, and are set forth in Section 2, next below printed.]

SEC. 2. That all that district of country embraced within the following BOUNDARIES be, and the same is hereby declared to be WITHIN THE LIMITS of the said city of Davenport, to-wit: Beginning in the middle of the main channel of the Mississippi river, due south of the central or half section line of section number thirty, in township seventy-eight, north of range four east; thence north along said central line to the line between sections nineteen and thirty; thence west along said section line, and the southern boundary line of section twenty-four, in township seventy-eight, north of range three east, to a point due north of the north-east corner of the tract of land reserved by the Government of the United States, and donated to Antoine Le Claire, and known as Le Claire's Reserve, in said township seventy-eight, north of range three east; thence north to the east and west central, or half section line of section twenty-four, in said last mentioned township; thence west on said central, or half section line, to the north-west corner of the south-west quarter of section twenty-three; thence south to a point half way between said corner and the south-east corner of section twenty-two; thence west to the western boundary line of said south-east quarter of section twenty-two; thence south to the county road, known as the telegraph road; thence westerly along the north side of said road to the section line between sections twenty-seven and twenty-eight; thence south to the south-west corner of the north-west quarter of section thirty-four; thence east to the south-east corner of said quarter section; thence south to the middle of the main channel of the Mississippi river, and thence up and along the middle of the main channel thereof to the place of beginning.

Additions to
plat.

SEC. 3. The tracts of land LAID OFF INTO TOWN LOTS, and duly recorded as required by law for the recording of "town plats" adjoining said town, or whenever any tract of land adjoining the city of Davenport shall have

been laid off, or shall hereafter be laid off into town lots, and duly recorded as required by law, the same shall be annexed to, and FORM A PART OF THE CITY of Davenport.

[The amendment of the City Charter approved January 24, 1853, and still in force, contained a similar provision, in the following language:]

Tracts of land laid off into town lots ADJOINING to the present boundaries of said city, shall be a part of said city, whenever the same are duly recorded as required by law. (Sec. 2 Act January 24, 1853.)

[And the amendment to the City Charter approved January 22, 1855, and still in force, contains, also, the following provisions respecting the platting and laying off lots within the limits prescribed by that amendment.*]

In platting and laying off lots WITHIN THE LIMITS AFORE-
SAID, the proprietors thereof shall make the STREETS at
least EIGHTY FEET WIDE, and the ALLEYS at least TWENTY
FEET WIDE, and every individual or company owning
within the above described limits forty acres, or more,
in any one body, shall, in laying it out into blocks or
lots, lay off at least one PUBLIC SQUARE, to contain not Public square.
less than two and three-fourths acres of land; said pub-

* For the former boundaries of the city under the amended charter of Jan. 22, 1855, see Revised Ordinances of 1862, p. 192; and General Laws of the State, acts of 5th General Assembly, p. 83.

ACTION OF CITY COUNCIL.—The following is an extract from the records of the City Council, Sept. 7, 1864:

“The committee on public grounds and buildings offered the following report:
To the City Council of the City of Davenport, in Council assembled:

“Your committee, to whom was referred the matter of the additions to the city of Davenport, on the amended charter of 1855, respectfully report:

“They have examined nearly all the plats of additions recorded since the amendment of the charter, and they find that the charter, in respect to the provision requiring streets to be of the width of eighty feet, has been almost universally disregarded. Your committee has examined about twelve of the most important of the additions to the city, no one of which has the streets of the required width.

“Your committee are of the opinion that it is inexpedient to attempt now to widen the streets on the plats of additions heretofore recorded so as to make them the width of eighty feet.

“D. L. SHOREY,
City Attorney.

JOHN HORNEY,
M. NOE.

“Adopted.”

lic squares to be enclosed and ornamented similar to other public squares in said city, by the city authorities, within three years after the laying out and recording the same. (Sec. 2 Act January 22, 1855.)

SEC. 4. The inhabitants of said city, by the name
General corporate powers.
and style aforesaid, shall have power to SUE AND BE

SUED, to implead or be impleaded, defend and be defended, in all courts of law and equity, and in all actions whatever, TO PURCHASE, RECEIVE AND HOLD PROPERTY, both real and personal and mixed IN SAID CITY ; to purchase, receive and hold property, both real, personal, and mixed, BEYOND THE CITY, FOR BURIAL GROUNDS, or for other purposes, for the use of the inhabitants of said city ; to sell, lease, convey or DISPOSE OF PROPERTY, real, personal and mixed, for the benefit of the city ; and to IMPROVE AND PROTECT such property, and to do ALL OTHER THINGS in relation thereto as NATURAL PERSONS.*

* GENERAL POWERS OF CORPORATION—HOW DETERMINED.—It is a general and undisputed proposition of law, that a municipal corporation possesses the following powers, *and no other*:

1. Those which are granted to it in *express words*;
2. Those *necessarily incident* to the powers expressly granted ; and
3. Those *essential* to the objects and purposes of the corporation—not simply convenient, but essential. (12 CUSH., 108, 105).

The charter or incorporating act is the organic law of the city. The Council can do nothing not authorized thereby. If it does, it transcends its powers, and the city is not bound. Much less can the council exercise any power which is prohibited. The rule above laid down, if well studied, will afford a guide to determine the power of the corporation. When it is proposed to do an act or pass an ordinance, let the inquiry be made, is the power given in *express words*? If not, is it *necessarily and fairly incident* to a power which is expressly given ? or, is it *essential* to the objects and purposes of the corporation? Any doubt as to the existence of a power is resolved by the courts *against* the city. Consult on this subject, *Clark v. City of Des Moines*, 18 Iowa Rep.; *Clark, Dodge & Co. v. City of Davenport*, 15 Iowa, 494; *Mintum v. Lane*, 23 How U. S. Rep., 486; 7 Ohio, pt. 2, p. 31, 35; 18 id., 523.

PROPERTY RIGHTS OF CITY—DISTINCTION.—Art. 1, Sec. 4, gives the city full power to buy, or to receive by will or gift, all kinds of property, for any purpose not foreign to the objects and purposes of the corporation. 15 How., 367; 5 Ind., 334; 15 N. H., 331; 3 Pick., 232, 238; 18 Mass., 371, 378. But in relation to this power, it is to be observed that a municipal corporation has rights of two distinct classes. It has a right to property which it may own, and with respect to these rights the corporation is likened to an individual property owner. It may acquire, hold, and convey such property the same as natural persons. *Reynolds v. Stark Co.*, 5 Ohio Rep., 204; 5 Ohio St. R., 113. But this does not apply to streets, squares, &c., held by the corporation in trust for the whole community : these cannot be sold or alienated by the corporation.

The rights of the corporation as a property-holder are distinct from the legisla-

ARTICLE II.

OF THE CITY COUNCIL.

SECTION 1. There shall be a CITY COUNCIL, to consist ^{Council} of a MAYOR and BOARD OF ALDERMEN.*

SEC. 2. The Board of Aldermen shall consist of two MEMBERS FROM EACH WARD, to be chosen by the qualified voters, for TWO YEARS.

SEC. 3. No person shall be an Alderman, unless at ^{Qualification of} the time of his election a citizen of the United States, six months a resident of the State of Iowa, over the age of twenty-one years, and resident three months within the limits of said city. If any Alderman shall, after his election, REMOVE FROM THE WARD for which he is ^{Removal from} Ward. elected in said city, his office shall be thereby vacated; at the first meeting of the City Council, the Aldermen

tive rights of the corporation. These latter rights are inalienable; and a corporation has no power, as a party, to make contracts which shall control or embarrass its legislative powers and duties.

Mayor v. Second Av. R. R. Co., 32 N. Y. Rep., 261; *Debalt v. Ins. Co.*, 1 Ohio St. R., 564; 3 id., 678; per Bartley J., dissenting, 5 id., 375; *Davis v. The Mayor, &c.*, 14 N. Y., 506, 532, (Broadway horse railroad case); 5 Cow., 538; 7 id., 588; 21 Pa. St. R., 175; 23 Wend., 277; 1 Hilt., 562, 568; 1 Hill., 545; compare 3 Duer, 119; 14 N. Y., 506; 25 Wend. 628.

JUDGMENTS NOT LIENS ON CITY PROPERTY.—A judgment against the city is not a lien upon property which it owns for general public purposes—such, for example, as a city hall, city hospital, and the like, and such property is not subject to levy and sale on execution against the city.

City of Davenport v. Peoria Ins. Co., 17 Iowa Rep., 276; Rev. 1860, Sec. 3274.

* VALIDITY OF CORPORATE MEETINGS—QUORUM DEFINED, &c.—By this section the Council “consists of a Mayor and Board of Aldermen.” The Board consists of twelve members. A majority of the Council constitutes a quorum. (Art. 2 Sec. 4). The general rule of law is, “that a majority must be present to constitute a quorum, and then a majority of the quorum may decide.” 2 Kent Com., 298. Mr. Dane illustrates the rule thus: “If the charter requires twelve Councilmen to do an act, seven of them at least must be present, though four of the seven may give the vote,” &c. 5 Dane Abr., 150; and see *Buell v. Buckingham*, 16 Iowa Rep., 288, 291, and cases there cited; *Ex parte Strahl*, 16 Iowa Rep., 869, and dictum on page 376. Under this rule will the Mayor (who only votes in case of a tie) and six Aldermen, being seven, (a majority of thirteen,) constitute a legal Council? This is doubtful; and for safety sake, a Council should do no business unless seven Aldermen be present. A majority of seven, or four, may then pass an ordinance or do any valid act. The provision of the new constitution (Art. 3, Sec. 7) requiring the assent of a majority of all the members of each branch of the General Assembly to pass a bill, does not apply to municipal corporations or alter the law applicable thereto, as it is above stated. See also *Coles v. Trustees, &c.*, 10 Wend., 658; *Ex parte Wilcox*, 7 Cew., 402; id. 463, note. Nature of office of Mayor and his functions and duties discussed Achley’s case, 4 Abb. Pr. Rep., 35.

Classes.

shall be divided by lot into two CLASSES, the seats of those of the first class shall be vacated at the expiration of the first year, and of the second class at the expiration of the second year, so that one-half of the Board shall be elected annually.*

Judge of Elections.

SEC. 4. The City Council shall JUDGE OF THE QUALIFICATIONS, elections, and returns of THEIR OWN MEMBERS, and shall determine all CONTESTED ELECTIONS.† A majority of the City Council shall constitute a QUORUM to do business, but a smaller number may adjourn from time to time and compel the attendance of absent members, under such penalties as may be prescribed by ordinance.

Quorum.

They shall have power to determine the RULE of its proceedings, punish their members for CONTEMPTUOUS OR DISORDERLY CONDUCT, and with the concurrence of two-thirds of the members elected, EXPEL a member. They shall cause to be kept a JOURNAL of their proceedings, and may from time to time publish the same, and the YEAS AND NAYS, when demanded by any member present, shall be entered on the journal. All VACANCIES that shall occur in the Board shall be filled by election.

Rules.
Expulsion.
Journal.

SEC. 5. The Mayor and each Alderman, before entering on the duties of their respective offices, shall take and subscribe an OATH or affirmation "that they will support the Constitution of the United States, and of the State of Iowa, and that they will discharge the duties of their office to the best of their knowledge and

Ayes and nays.**Vacancies.**

* **RIGHT TO HOLD OVER.**—Where it is made the duty of a City Council to give notice of and provide for an *annual* election, and they fail to do so, it has been decided that they do not hold over, as this would be basing a right upon their own neglect of duty. But *quere*.

People v. Bartlett, 6 Wend., 422; but see 9 Johns, 147; 8 Abb. Pr. Rep., 359: 1 Ind. (Cart.) 500, 502, and cases cited; 9 Fost., 213, commenting on N. Y. cases.

† **CANVASSING VOTES.**—Where the Common Council has once legally canvassed the votes for the election of municipal officers, they have exhausted their power, and cannot afterwards reverse their decision by making a different determination.

Hadley v. Mayor, 33 N. Y. Rep., 603. How far and when decision of Council is final, see *Hadley v. Mayor*, 33 N. Y. Rep., 603; *State of Iowa v. Funck*, 17 Iowa Rep., 365; *Ex parte Strahl*, 16 Iowa Rep., 369.

The city of Davenport has passed ordinance (herewith printed) relating to contested and tie elections.

ability." Whenever there shall be a TIE in the election ^{Tie election.} of an Alderman, the judges of the election shall certify the same to the Mayor, who shall determine the same BY LOT, in such manner as shall be determined by ordinance. There shall be twelve STATED MEETINGS of the ^{Meeting.} City Council in each year, at such times and places as may be prescribed by ordinance, and for such SPECIAL MEETINGS as they may deem necessary.

ARTICLE III.

OF THE CHIEF EXECUTIVE OFFICER.

SECTION 1. The chief executive officer of the city shall be a MAYOR, who shall be elected by the qualified ^{Mayor.} voters of the city, and shall hold his office for ONE YEAR, and until his successor shall be elected and qualified. No person shall be ELIGIBLE to the office of ^{Eligibility and term.} Mayor, who shall not be a citizen of the United States, a resident of the city one year next preceding his election, and over the age of twenty-one years; and if any Mayor shall, during the time for which he shall have been elected, remove from the city, or be ABSENT there- ^{Mayor absent.} from MORE than two MONTHS at any one time, his office shall become thereby vacated. (See next section.)

SEC. 2. When two or more persons shall have an EQUAL NUMBER of votes for Mayor, the judges of the ^{Tie vote.} election shall certify the same to the City Council, who shall proceed to determine the same by lot, in such manner as may be provided by ordinance. Whenever an election shall be CONTESTED for Mayor, the City Council shall determine the same in such manner as may be prescribed by ordinance; and whenever any VACANCY shall happen in the office of Mayor, it shall be ^{Filling vacancy.} FILLED BY ELECTION; and until such election shall be had, it shall be competent for the Board of Aldermen to elect one of their number President, who shall be Mayor *pro tem.*

[By the amended Charter of January 23d, 1857, the following provision is made concerning sickness or

Mayor pro tem.

absence by the Mayor for a *less* period than two months, to-wit:]

In case of the SICKNESS OF THE MAYOR, or of his absence from the city for a LESS period than two months, said City Council may elect one of the Aldermen Mayor *pro tem.*, who shall possess all the authority, and perform all the duties of the office of Mayor during such sickness, or temporary absence of the Mayor. (Sec. 3 Amended Charter, January 23, 1857.)

ARTICLE IV.

OF ELECTION,

SECTION 1. On the first Saturday of April next, (A. D. 1851) an election shall be held in each ward of said city, for one MAYOR for said city, two ALDERMEN FOR EACH WARD, and forever thereafter on the FIRST SATURDAY OF APRIL, of each year, there shall be an election held for one Mayor for the city, and an Alderman for each ward. The City Council shall, before each annual or special election, appoint three electors in each ward of said city, to act as judges and clerks of said election, who shall take the same oath, conduct the elections in the same manner as are now provided, or hereafter may be provided by law for holding and conducting elections for county officers; said judges and clerks shall return a certified statement of the persons voted for as Aldermen and Mayor, in their respective wards, within three days, to the Clerk of said city; and a majority of said judges shall meet at said Clerk's office on the Monday following, and CANVASS the number of votes cast, who for, and the person elected Mayor, (provided there has been a choice) to the Clerk of said city. The Clerk shall receive said returns, certificates and poll books, and preserve the same among the papers of his office, and shall give the person and persons receiving the highest number of votes for Mayor and Aldermen, a NOTICE OF THEIR ELECTION, within two days after the receipt of the returns aforesaid, and such person receiving

Election of officers.

Time and mode.

Canvass.

Duty of Clerk

Notice of election.

such notice of his election, as Mayor or Alderman, shall, within FIVE DAYS after the receipt of such notice, ^{when to qualify} take the oath prescribed in this act for the office to which he may have been elected, and a neglect or refusal to take such oath, and file the same with the Clerk, shall be taken as a refusal of said office, and the City Council may proceed to fill such vacancy as provided for in this act.

SEC. 2. All resident citizens over the age of twenty-^{Who may vote.} one years, who are entitled to vote for State officers, and who shall have been actual residents of said city ninety days next preceding said election, shall be ENTITLED TO VOTE for city officers; provided, that said electors shall give their votes for Mayor and Alderman IN THE WARDS in which THEY RESPECTIVELY RESIDE; and ^{Where.} for VOTING ILLEGALLY at any election herein provided ^{Illegal voting.} for, shall be punished IN THE SAME MANNER, and with like effect, as is provided under the general laws of the State of Iowa for illegal voting.*

ARTICLE V.

OF THE LEGISLATIVE POWERS OF THE CITY COUNCIL.

SECTION 1. The City Council shall have POWER AND AUTHORITY to levy and collect TAXES upon all taxable ^{Taxes.} property, real, personal and mixed, within the city, not exceeding one-half per cent. per annum upon the assessed value thereof, which value shall be ascertained by the assessor of said city; to provide by ordinance the time for taking such ASSESSMENT; when the same shall be returned to the City Clerk, and also provide ^{Mode of assessment, &c.} for the assessing of property that may have been omit-

* By the laws of the State here referred to, if a voter "unlawfully vote more than once at any election," or if a person vote when he knows himself not to be qualified to do so, he is punishable by fine ranging from \$200 to \$300, and by imprisonment in the county jail not exceeding one year. Revision of Iowa of 1860, Sections 4334, 4335, 4336.

Prosecutions for illegal voting at charter elections must be in the District Court. There is no ordinance providing for such prosecution before the Mayor or Police Magistrate. Such an ordinance would be of very questionable validity. (Bill of Rights, Sec. 11; Rev. 1860, Secs. 4334-36, above referred to; Charter, Art. 4, Sec. 2).

ted or overlooked, or otherwise not returned by said assessor; also the time when said Clerk shall make out and deliver to the Marshal of said city, a COPY OF SAID ASSESSMENT, together with the tax due or assessed, which said copy shall be SEALED with the common seal of said city, with a WARRANT for the collection of the taxes so assessed, signed by the Mayor and Clerk of said city.* The City Council shall have power to cor-

* **RIGHT TO LEVY TAXES—GENERAL PRINCIPLE.**—A city cannot exercise the power of taxation unless the power is expressly conferred. Property cannot be taxed unless it is authorized by the legislature. When the mode is prescribed, that mode alone can be pursued. The power is strictly construed, and must be closely followed.

City of Davenport v. M. & M. R. R. Co., 12 Iowa Rep., 545; *City of Burlington v. Kellar*, 18 Iowa Rep.; *Tallman v. Buell Co.*, 12 Iowa, 531; *Buell v. Ball* 19 Iowa Rep.

EXTENT OF CITY'S POWER TO LEVY TAXES.—It has been decided by the Supreme Court of this State that under Art. 5, Sec. 1 of the charter, the city has no power to levy a tax (even to pay a judgment) beyond the one-half per cent. per annum. This is the limit authorized by the charter, and the city cannot be compelled by mandamus to exceed it. In addition to this, a special tax may be levied under Secs. 7 and 8 of the amended charter of January 22, 1855, to pay the particular debt therein referred to. In addition to this the charter authorizes the levy of a road tax not exceeding three mills on the dollar. (Amendment to charter of January 23, 1857, Sec. 4.) This is the extent of the power of the city to levy general taxes. It may also levy a poll-tax and make, in certain cases, special assessments. See act of 1866, as to tax for health purposes.

The power of the city of Davenport, with respect to the levy of taxes, will be found discussed and determined in the following cases:

Clark, Dodge & Co. v. Davenport, 12 Iowa Rep. 335; *Gas Light Co. v. Davenport*, 13 Id. 229; *Clark, Dodge & Co. v. Davenport*, 14 Id. 494.

City may by mandamus be compelled, if necessary to pay a judgment creditor, to levy the maximum rate authorized by its charter.

Coy v. Lyons, 17 Iowa Rep. 1.

As to mandamus to city to compel levy of tax see also *Dox v. Co. Judge*, 12 Iowa R. 237.

AS TO RIGHT TO TAX LANDS NOT LAID OFF INTO LOTS.—Upon the subject of taxation of lands by cities the Supreme Court of this State has made some very important decisions.

The Court admits that the legislature has the power to extend the limits of a city so as to include adjacent lands and property without the consent of the owner and tax the same. (S. P. 11 Ohio St. Rep. 96, 285, 290.) But this right to tax is subject to this limitation: So long as the land thus embraced in the city limits is used solely for agricultural purposes or lies vacant and is not laid out into town lots, nor needed or required for streets or houses or other purposes of a town, the corporation authorities cannot tax such property as town property without the consent of the owner.

The above are cases where the corporation cannot tax the property for strictly corporate purposes.

But on the other hand, when the property to be taxed is within the corporate limits in such close proximity to the settled and improved portions of the town, that the corporate authorities cannot open and improve its streets and alleys and extend its police regulations, &c., without incidentally benefitting the property

rect or equalize any erroneous or injudicious assessment. The MARSHAL shall be THE COLLECTOR of all taxes ^{Mode of collection, &c.} assessed as aforesaid; he shall, upon receiving a copy of such assessment and warrant, as aforesaid, make PERSONAL DEMAND of every resident charged with tax, if to be found within said city, or LEAVE A WRITTEN NOTICE of the amount of such tax at his or her place of abode, and shall put up at least one WRITTEN NOTICE IN EACH WARD of said city, that if the taxes are not paid within twenty days thereafter, the same will be collected by sale of property of delinquents; at the expiration of which twenty days said Marshal may, and he is hereby authorized by DISTRESS AND SALE OF PERSONAL PROPERTY of such delinquent or delinquents, as consta-

and enhancing its value, where, in other words, the property is needed for buildings and houses, and is benefitted by the city government, then the power to tax the same exists, though it may not actually be laid out into lots.

With these rules each case must be decided upon its special circumstances. If the owners have laid off the same into lots, it is to this extent clearly liable to municipal taxation. And property, though not liable to ordinary *municipal* taxation, may yet be liable for road and school taxes where the city or town is a road or school district, levying its own taxes for these purposes. These principles of law will be found settled, discussed, and illustrated in the following cases:

Morford v. Unger, 7 Iowa Rep., 82, (the first and leading case), followed by *Langworthy v. Dubuque*, 13 Iowa, Rep., 86; same case more fully, 16 Iowa Rep., 271; *Fulton v. Davenport*, 17 Iowa Rep., 404; *Butler v. Muscatine*, (pork-house case,) 11 Iowa Rep., 533; *Buell v. Ball*, 16 Iowa Rep.; *R. R. Co. v. Spearman*, 12 Iowa Rep., 118.

If the property is, in fact, not liable to city taxation, the party is not estopped from objecting to its payment because he has previously paid similar taxes without objection. 13 Iowa, 86.

Power of cities to tax *banks and bank-stock*, see *McGregor v. State Bank*, 12 Iowa Rep. 79. As to power of city to tax *railroad* property, the Judges of the Supreme Court were equally divided—DILLON and WRIGHT, J. J., affirming the power to tax their real property, and COLE, J., and LOWE, C. J., denying the power. See *City of Davenport v. M. & M. R. R. Co.*, 14 Iowa Rep., 348; 17 Iowa Rep., 120. As to personal liability of officers of city for not levying tax, see *Oscald v. Thedinga*, 17 Iowa Rep., 13.

TAXES—ACTION TO RECOVER BACK.—No action lies against a municipal corporation to recover back money *voluntarily* paid under an invalid law or ordinance. *Espey v. Fort Madison*, 14 Iowa Rep., 226. Or for money paid for a city license. *Kraft v. Keokuk*, 14 Iowa Rep., 86.

REMEDY OF TAX-PAYER.—The remedy of the party against whom taxes are *erroneously* assessed, or where there is an *over-assessment*, is to apply to the Board of Equalization to have the remedy corrected. But where the law is illegal, or the assessment void, the party may bring his action of trespass, or replevin, or in equity, to restrain the collection. But he cannot resort to these latter remedies where the power to tax exists, but has simply been irregularly exercised.

Macklot v. City of Davenport, 17 Iowa Rep., 379; *Litchfield v. Polk Co.*, 18 Iowa Rep., 70.

Sale of real
property.

Certificate of
sale.

Redemption.

Interest.

See note to this
section.

Deed.

Effect of deed.

bles on executions, to collect said tax, or he may, after the expiration of the said twenty days, if said tax shall remain unpaid, give NOTICE BY PUBLICATION in one of the newspapers published in said city, for six consecutive weeks, stating the amount of said tax, costs, and printer's fee and the number of the lot, or the description of the piece of land or property on which the same are due, and the owner's name if known, and that the said lot, piece of land or property will be sold on the day and at the place to be mentioned in said notice, unless payment be made of the taxes, costs, and printer's fee, on or before said day of sale, and if such payment should not be made according to said notice, then said Marshal shall proceed and SELL THE SAME in accordance with said notice, for said amount due, to the bidder who will take the least quantity of the lot, or piece of land or property, off from the side which said Marshal shall designate, or the whole, if no bid for a less quantity, and he shall give to the purchaser thereof a certificate stating the description of the piece of land, or the number of the lot, or the portion thereof, or the property purchased and price paid therefor, and the day of sale; and at the expiration of two years thereafter, if the owner or claimant shall not REDEEM the same by paying the amount for which the same was sold, together with FIFTY PER CENT. per annum to the purchaser, or to the City Treasurer, for said purchaser's benefit, said purchaser, or his heirs or assigns, shall be entitled to a deed therefor, and the Mayor of said city shall, on demand, and the presentation of said certificate, make, execute and deliver to the holder, or owner of such certificate, A DEED for said property, in said certificate mentioned, which, when acknowledged, or proven and recorded, as other deeds are acknowledged and proven, shall be good and valid in law and equity, to pass a valid title to such lot, piece of lot, ground or property, and shall be *prima facia* evidence in all courts that all things have been complied with, nor shall the same ever be inquired into, until the amount

for which said property, or real estate, together with the interest aforesaid, shall have been tendered to the holder thereof, or deposited in the City Treasury, for his or their benefit.*

SEC. 2. The City Council shall have power to provide by ordinance, from time to time, for the election of a CLERK, TREASURER, ASSESSOR, MARSHAL, and one city officers. or more STREET COMMISSIONERS, by the electors of said town, by causing one or more polls to be opened in Election, &c. said city, for said purpose; and they may appoint such other officers as they may deem necessary, or provide for their election by the voters of said city at the same time and place that the above officers are elected;†

* The provisions of Sec. 1, Art. 5, of the city charter, in relation to interest on tax sales, tax deeds made by city authorities, etc., are essentially changed by Chap. 165 of the laws of the 7th General Assembly. See laws of 1858, p. 207; Rev. 1860, p. 194. This act took effect July 4, 1858, and is as follows:

"AN ACT concerning taxes levied by Municipal Authorities.

"WHEREAS, By the charters and other acts granting to municipal corporations the right to levy and collect taxes on real estate, the mode of said collection, the rate of interest, and the effect of the collector's deed, are various, unequal, and in some cases unjust; and whereas, it is desirable to remedy such defects, and establish a uniform principle on the subject; therefore,

"SECTION 1. *Be it enacted by the General Assembly of the State of Iowa*, That from and after the publication of this law, in all cases of the sale of real estate made by virtue of the law and ordinances of any municipal corporation in this State, the purchaser shall receive a deed, which shall have the same effect as the County Treasurer's deed, under sales made by him as provided in the Code [of 1851,] and that the mode there provided for the purpose of making sales effective and foreclosing the redemption, shall be purchased [pursued] by the holder of said corporation deed; and no greater rate of interest than twenty-five per cent. per annum shall hereafter be charged on any such deed or sale." General tax law

Construction of above act, see *Street v Hughes*, 19 Iowa Rep.; *Sweet v. Billings*, 14 Iowa Rep., 384. The revenue ordinances of the city of Davenport (herewith printed) have been made to conform to this State law.

† By the amended city charter of Jan. 22, 1855, (Sec. 6 of said amendment) the power is given to the City Council to *appoint*, instead of providing for electing, the Street Commissioner, Assessor, and subordinate officers. This amendment is as follows:

"The City Council shall have the power to appoint a STREET COMMISSIONER OR Commissioners, a CITY ASSESSOR, and such subordinate officers as they may deem proper, to hold their offices during the pleasure of the City Council; or they may provide by ordinance for their election. The CITY CLERK, MARSHAL, OR TREASURER may be removed by the City Council when, in their opinion, they are incompetent, or neglect to discharge their duties; and in case of such removal, they may appoint a successor until the next annual election."—[Sec. 6 of amended charter of Jan. 22, 1855.] Additional section to charter.

Under this the city may either appoint or provide for the election of Street Commissioner and Assessor by the people. The Clerk, Marshal, and Treasurer are still left elective. Other officers may be either appointed or elected, as the City Council may provide.

Bond.

Oath.

General powers
City Council.

See decisions as to the specific powers, duties and liabilities of cities, at the end of the charter.

See also charter,
Art. 1, Sec. 4.

their tenure of office shall be one year, and said City Council, before the election or appointment of any officer aforesaid, shall have power to require of any, or all of them, BONDS, with penalty and security, for the faithful performance of their respective duties, as may be deemed expedient, and to take AN OATH for the faithful performance of the duties required of them in their respective offices, before entering upon the discharge of the same; to establish, support and regulate COMMON SCHOOLS, to APPROPRIATE MONEY, and provide for the payment of the DEBTS AND EXPENSES of the city; to BORROW MONEY on the credit of the city, to be used for such purposes as they may think conducive to the welfare thereof. In all cases where the City Council may

borrow money, they shall provide for the payment of the interest thereof, by setting apart a portion of the ordinary revenue, and collecting it for that purpose.

The question of borrowing money shall be submitted and approved by a majority of the tax payers of said city; *Provided*, that no debt shall be contracted, that the interest per annum, in any one year, due thereon, shall exceed one-half the revenue derived from tax on the real estate and personal property within said city. To make regulations to prevent the introduction of CONTAGIOUS DISEASES into the city, to make QUARANTINE LAWS for that purpose, and enforce the same within five miles of the city; to establish HOSPITALS, and make regulations for the government of the same; to make regulations to secure the GENERAL HEALTH of the inhabitants; to declare what shall be a NUISANCE, and to prevent, remove or abate the same; to tax DOGS or prevent them going at large; to provide the CITY WITH WATER; to erect HYDRANTS and PUMPS in the streets for the convenience of the inhabitants; to OPEN, alter, ABOLISH, widen, extend, establish, GRADE, PAVE, OR OTHERWISE IMPROVE AND KEEP IN REPAIR, STREETS, AVENUES, LANES AND ALLEYS; to establish, erect and keep in repair BRIDGES; to divide the city into WARDS, alter the boundaries thereof, and erect additional wards as the occa-

sion may require ; to provide for LIGHTING THE STREETS ^{General powers} and erecting lamp-posts ; to establish, support and regulate NIGHT WATCHES ; to erect MARKET HOUSES, to establish markets and market places, and to provide for the government and regulation thereof ; to provide for the erection of all NEEDFUL BUILDINGS for the use of the city ; to provide for the enclosing, improving and regulating ALL PUBLIC GROUNDS belonging to the city ; to improve and preserve the NAVIGATION OF THE MISSISSIPPI RIVER within the limits of the city ; to erect, repair, and regulate PUBLIC WHARVES and DOCKS ; to regulate the erection and repair of PRIVATE WHARVES, AND THE RATES OF WHARFAGE THEREAT ; to license, tax, and regulate AUCTIONEERS, TRANSIENT MERCHANTS, RETAILERS AND GROCERS, TAVERNS, ORDINARIES, HAWKERS, PEDLARS, BROKERS, PAWNBROKERS AND MONEY CHANGERS ; to license, tax and regulate HACKNEY CARRIAGES, WAGONS, CARTS AND DRAYS, and fix the RATES to be charged for the carriage of persons, and for the wagonage, cartage, and drayage of property ; to license and regulate PORTERS, and fix the RATES OF PORTERAGE ; to license, tax and regulate THEATRICAL and OTHER EXHIBITIONS, shows and amusements ; to tax BILLIARD TABLES, restrain, prohibit, and suppress TIPPLING HOUSES, DRAM SHOPS, GAMING HOUSES, BAWDY, and other DISORDERLY HOUSES ; to provide for the prevention and extinguishment of FIRES, and to organize and establish FIRE COMPANIES ; to regulate or prohibit the erection of WOODEN BUILDINGS in any part of the city to regulate the fixing of CHIMNEYS and fix the flues thereof ; to regulate the storage of GUNPOWDER, TAR, PITCH, ROSIN and other COMBUSTIBLE MATERIALS ; to regulate and order PARAPET walls and FENCES ; to establish standard WEIGHTS AND MEASURES, and to regulate the weights and measures to be used in the city, in all cases not otherwise provided for by law. To provide for the INSPECTION AND MEASUREMENT OF LUMBER, and other BUILDING MATERIALS, and for the measurement of all kinds of MECHANICAL WORK ; to provide for the inspection and weighing of HAY AND

General powers of City Council. STONE COAL, the measuring of CHARCOAL, FIRE WOOD, and OTHER FUEL, to be sold or used in the city; to provide for and regulate the INSPECTION of tobacco, beef, pork, flour, meal and whisky in barrels; to REGULATE THE WEIGHT, quality, and price of BREAD to be sold and used in the city; to provide for taking the ENUMERATION OF THE INHABITANTS of the city; to regulate the ELECTION OF CITY OFFICERS, and to provide for the REMOVING from office any person holding an office created by ordinance; to fix the COMPENSATION OF ALL CITY OFFICERS, and regulate the FEES OF JURORS, WITNESSES and others, for services rendered under this act or ordinance; to prohibit the DISCHARGING OF FIRE-ARMS, and the RACING and immoderate running or driving of horses, drays, carts, carriages, wagons or other vehicles in said city; to REGULATE THE POLICE of the city; to impose FINES, FORFEITUDES, AND PENALTIES for the breach of any ordinance, and provide for the recovery and appropriation of such fines and forfeitures, and the enforcement of such penalties, and the licensing and regulating retailers of spirituous and vinous liquors in said city.

Ordinances.

The City Council shall have power to make ALL ORDINANCES which shall be NECESSARY AND PROPER for carrying into execution the powers specified in this act, so that such ordinances be not repugnant to or inconsistent with the Constitution of the United States and of the State of Iowa.

Style.

The STYLE of the ordinances of the city shall be—
“Be it enacted by the City Council of the City of Davenport.”

Publication of Ordinances.

All ordinances passed by the City Council shall, within one month after they shall have been passed, be PUBLISHED in some newspaper published in said city, or a certified copy thereof, signed by the Clerk, posted up at one or more public places in each ward of said city, and shall not take effect until ten days after publication or posting up, as above provided for. All ordinances, by-laws, rules, and regulations shall be RECORDED by the Clerk of the city in a book to be kept for that purpose,

Record and authentication.

with a certificate to each that the same has been published in some newspaper published in said city, or a copy thereof posted in each ward thereof, and that the same is a correct copy of the original as passed by the City Council ; and the said book, or a copy of any by-law, ordinance, rule, or regulation, with the certificate of the Clerk of the publication aforesaid, certified by the said Clerk to be a true copy of such by-law, ordinance, rule, or regulation, shall be sufficient authentication to allow the same to be read or received in evidence, in all actions and suits in any court in this State, or when said by-laws, ordinance, rules, and regulations Printed volume
made evidence. shall be published IN BOOK OR PAMPHLET FORM, and purporting to be printed and published by authority of the corporation, the same shall be received in evidence in all courts and places without further proof.

[In relation to the debt of the city and the power to borrow money, the amended charter of January 22, 1855, contains the following provision—*See. 7, amended city charter of January 22, 1855*] :

SEC. 7. The debts heretofore created, and bonds issued by the city of Davenport, amounting to the sum Railroad debt. of one hundred and twenty-five thousand dollars, are hereby declared legal and binding upon the said city, and the City Council shall have the right to borrow money and issue bonds, which shall be binding upon the city ; *Provided*, that no debt shall be created, the yearly Power to bor-
row money. interest upon which, together with the yearly interest upon any debt before created, shall exceed three-fourths of the ordinary yearly revenue, unless the contracting of said debt shall be approved by a majority of the voters of said city, who may vote upon question to be submitted by the City Council, in such manner as said City Council may direct. (See note on page 42.)

SEC. 8. Whenever there is a deficiency in the ordinary revenue of the city, after the payment of the ordinary city expenses, to pay the semi-annual interest on the debt already created, the City Council shall levy a Specific tax for
past debt.

specific tax upon the assessment roll of the current year, to pay said interest.”*

[The original charter (Art. 5 Sec. 2) gives to the City Council unrestricted power to “*abolish*” streets, alleys, &c. By the amendatory act (Sec. 23) of January 23, 1857, it is provided]:

SEC. 23. Nothing herein contained, or in the acts to which this is amendatory, shall authorize the City Council to DISCONTINUE OR CONTRACT any street, lane, alley, or highway, or any part thereof, without the consent in writing of all persons owning land adjoining said street, lane, alley, or highway.†

ARTICLE VI.

OF THE MAYOR.

Mayor presides. SECTION 1. The Mayor shall PRESIDE at all meetings of the City Council, and shall have a CASTING VOTE, and no other. In case of the non-attendance of the Mayor at any meeting, the Board of Aldermen shall appoint *Pro tem.* Mayor one of their own members chairman, who shall preside at the meeting.

Special meetings. SEC. 2. The Mayor, or any two Aldermen, may call SPECIAL MEETINGS of the City Council, by notifying

* Under the original charter, even *with* a vote of the tax-payers, no debt could be contracted, the yearly interest of which should exceed one-half of the yearly revenue of the city. This was a salutary and wise restraint. By the amendment of 1855, (Sec. 7 above), if this shall be construed, as was perhaps intended, to apply to other than the railroad debt therein specified, and to enlarge the power of the city to borrow money and create debts, there is *no limit* to the amount of money the city may borrow, if approved by a majority, not of the tax-payers, but of the voters who shall vote upon the question.

† Under this, the power of the Council to vacate streets, &c., is made to depend upon the written consent of all persons owning land adjoining the same.

In 1862, (see laws of Iowa, 1862, p. 79, ch. 78,) the Legislature of the State passed an act authorizing town plats, additions to town plats, and sub-divisions of town lots, to be vacated by the owner at any time before the sale of any lot or lots, executing, acknowledging, and recording a writing to that effect; and if any part of the lots have been sold, all of the owners may, by joining, thus vacate the same. The corporate authorities are not required to be consulted. The property is made liable after the vacation for corporate taxes legally levied before the vacation and for its proportion of pre-existing corporate debts. How far this act will be taken to apply to cities with special charters, as well as its meaning, are questions which must be settled by the courts.

each Alderman, Mayor, and Clerk of said city, of the time and place of meeting, and the business to be transacted at such meeting; and no other business than that designated in said notice shall be transacted.

SEC. 3. The Mayor shall at all times be active and Mayor's duties. vigilant in ENFORCING THE LAWS AND ORDINANCES for the government of the city; he shall INSPECT THE CONDUCT OF ALL SUBORDINATE OFFICERS of said city, and cause negligence and positive violation of duty to be prosecuted and punished; he shall, from time to time, communicate to the Aldermen such information, and RECOMMEND ALL SUCH MEASURES as in his opinion, may tend to the improvement of the finances, the police, the health, security, comfort, and ornament of the city.

SEC. 4. He shall, by virtue of his office, be a JUSTICE Powers—ex-officio Justice of the Peace. of the PEACE for said city, and as such shall be a conservator of the peace in the said city, and shall have power and authority to administer oaths, issue writs and processes under the seal of the city, to take depositions, the acknowledgments of deeds, mortgages, and all other instruments of writing, and certify the same under the seal of the city, which shall be good and valid in law; he shall have EXCLUSIVE JURISDICTION in Jurisdiction. all cases arising under the ordinances of the corporation, and CONCURRENT JURISDICTION with all other Justices of the Peace in all civil and criminal cases within the county of Scott, arising under the laws of the State; and shall receive the same fees and compensation for his services in similar cases. He shall also have such Mayor's powers and duties. jurisdiction as may be vested in him by ordinance of the city, in and over all places within five miles of the boundaries of the city, for the purpose of enforcing the health, quarantine ordinances, and regulations thereof, and the protection of cemeteries or grave yards, and enclosures.

SEC. 5. He shall, before entering upon the discharge of the duties of his office, give BOND AND SECURITY to be Bond. approved of, and filed with the Clerk of said city, in the same penalty, and with like conditions, as are re-

quired of Justices of the Peace now by law, and the same may be prosecuted for any breach, in the same manner and with the like effect, as is required by law for similar cases under the laws of Iowa; he shall receive for his services, as Mayor of said city, such Compensation, SALARY as shall be fixed by an ordinance of the city.

Punishment
and removal.

SEC. 6. In case the Mayor shall, at any time, be guilty of a palpable OMISSION OF DUTY, or shall wilfully and corruptly be guilty of OPPRESSION, MAL-CONDUCT, OR PARTIALITY, in the discharge of the duties of his office, he shall be liable to be INDICTED in the District Court of Scott county, and on conviction he shall be fined in a sum not exceeding two hundred dollars, for the use of said city, and the court shall have power, on the recommendation of the jury trying said indictment, to add to the judgment of the court that he BE REMOVED FROM OFFICE.

Process, writs,
&c.

Powers and du-
ties of Marshal.

SEC. 7. All processes, or writs, issued by the Mayor, may be either a WARRANT for the arrest of the person of the offender, or WRITS IN THE USUAL FORM, directed to the Marshal of said city, who shall serve and return the same as commanded in said warrant or writs, and in case of a warrant to bring the offender forthwith before said Mayor, the MARSHAL of said city shall have the SAME AUTHORITY, and do and perform the same duties, and shall be subject to the SAME LIABILITIES in the service and return of all such writs or process issued by, and in attending the trial before such Mayor, for recovery of fines and penalties, for the breach or violation of any of the by-laws, ordinances, rules or regulations of said corporation, that constables have in their respective counties.

ARTICLE VII.

PROCEEDINGS IN SPECIAL CASES.

[Article VII in the original charter, entitled "*Proceedings in special cases.*" was repealed by Section 27 of

the amended city charter, approved January 23, 1857, which repealing act is as follows :

"SEC. 27. That the whole of article *seven* of said act to incorporate the city of Davenport, and all other acts and parts of acts inconsistent with the provisions of this act, be and the same are hereby repealed."

Article VII of the original charter (being thus repealed), is therefore omitted, and the provisions of the amended charter (of January 23, 1857), being those now in force, are printed in their place ; these provisions being as follows] :

SEC. 6. The City Council shall have power to lay out public squares or grounds, streets, alleys, lanes, or highways, and to make wharves in the river, and alter, widen, contract, straighten, and discontinue the same. They shall cause all streets, alleys, lanes, highways, or public squares, or grounds laid out by them, to be surveyed, described, and recorded in a book to be kept by the Clerk, showing particularly the proposed improvements, and the real estate required to be taken therefor, and the same, when opened and made, shall be public highways.

streets,
wharves, &c.

SEC. 7. Whenever any street, alley, lane, highway, or public square or ground, is laid out, altered, widened, or straightened, by virtue hereof, the City Council shall give notice of their intention to appropriate and take the land necessary for the same, to the owner or owners thereof, by publishing said notice for ten days in some newspaper published in said city ; at the expiration of which time, they shall choose by ballot three disinterested freeholders residing in said city, as commissioners to ascertain and assess the damages, and recompense the owners of such lands respectively, and at the same time determine what persons will be benefitted, and assess the damages and expenses thereof on the real estate of persons benefitted, in proportion as nearly as may be the benefits resulting to each. A majority of all the Aldermen authorized by law to be elected shall be necessary to the choice of such commissioners ; *Pro-*

Taking private
property, open-
ing streets, &c.

vided, that the provisions of this section shall not apply in any case where such street or alley has already been ordered to be opened, and the damages are not yet paid.

Damages for changing grade. SEC. 8. In any case where a grade has been established by the City Engineer, and any person has built or made any improvements on a street according to said grade, and the city authorities shall alter said grade in such a manner as to injure or diminish the value of said property, said city shall pay to the owner or owners of said property so injured, the amount of such damage or injury.*

Same. SEC. 9. Said damage or injury shall be assessed by three persons—one of whom shall be appointed by the Mayor of said city, one by the owner of the property, and one by these two so appointed, or in case of their disagreement by the Mayor and owner, or in case of their disagreement, by the City Council: *Provided*, that if the owner of such property shall fail to appoint one such appraiser in ten days from the time of receiving notice so to do, then the City Council shall appoint all said appraisers, and no such alteration of grade shall be made until said damages so assessed shall have been paid or tendered to the owner or owners of the property so injured or damaged.

Proceedings of commissioners. SEC. 10. The commissioners shall be sworn faithfully to execute their duties according to the best of

* Without an express provision to that effect, a city is not liable to a property owner for damages which result to him in consequence of the *establishment* or in consequence of the *change* of grades of streets. This is so decided in all of the States (Ohio perhaps excepted), and by our own Supreme Court.

Creal v. Keokuk, 4 G. Greene's Rep., 47; *Coates v. City of Davenport*, 9 Iowa Rep., 227; *Cole v. Muscatine*, 14 id. 296; *Freeland v. Muscatine*, 9 id. 461; *Tempelin v. Iowa City*, 14 id. 60.

But this rule is so far modified by Section 8 above that the property owner may hold the city liable for damages when, 1st, a prior grade has been established; 2d, when improvements have been made according to said grade; 3d, when the city authorities afterwards alter such grade to the injury of the property. This is a very just modification of the common law rule, and should induce the city authorities to exercise great caution in the original establishment of grades.

Section 8 above was construed by the Supreme Court in *Dalzell v. City of Davenport*, 12 Iowa Rep., 437, where it was held that the damages were to be ascertained with reference to the land and improvements together, and not the improvements alone. See also *Freeland v. Muscatine* 9, Iowa, 461; *Coates v. Davenport*, id. 227.

their ability. Before entering upon their duties they shall give notice to the persons interested of the time and place of their meeting for the purpose of viewing the premises and making their assessment, at least ten days before the time of such meeting, by publishing the same in some newspaper published in said city. They shall view the premises, and in their discretion receive any legal evidence, and may adjourn from day to day.

Same.

SEC. 11. If there should be any building standing, in whole or in part, upon the land to be taken, the commissioners, before proceeding to make their assessment, shall first estimate and determine the whole value of such building to the owner, aside from the value of the land and the injury done him in having such building taken from him; and secondly, the value of such building to him to remove.

Same

SEC. 12. At least five days personal notice shall be given to the owner of such determination, when known, and a resident of the city, or left at his usual place of residence. If not known, or a non-resident, notice to all persons interested shall be given by publication for ten days in some newspaper of said city. Such notice shall be signed by the commissioners, and specify the building and the award of the commissioners. It shall also require parties interested to appear on a day therein named, or give notice of their election to the City Council, either to accept the award of the commissioners, and allow such building to be taken with the land condemned or appropriated, or of their intention to remove such building at the value set thereon by the commissioners to remove. If the owner shall agree to remove the building, he shall have such time for the removal as the City Council may allow.

Same.

SEC. 13. If the owner refuse to take the building at the value to remove, or fail to give notice of his election as aforesaid, within the time prescribed, the City Council shall have power to direct the sale of such building at public auction for cash, giving ten days public notice

of the sale. The proceeds of the sale shall be paid to the owner, or deposited to his use.

Same.

SEC. 14. The commissioners shall thereupon proceed to make the assessment, and determine and appraise to the owner or owners the value of the real estate appropriated for the improvement, and the injury arising to them respectively from the condemnation thereof, which shall be assessed to such owners respectively as damages, after making all due allowances therefrom for any benefit which said owners may respectively derive from such improvement. In the estimate of damage to the land, the commissioners shall include the value of the building (if the property of the owner of such land), as estimated by them as aforesaid, less the proceeds of the sale thereof, or if taken by the owner, at the value to remove; in that case they shall only include the difference between such value and the whole estimated value of such building.

SEC. 15. If the land and buildings belong to different persons, or if the land be subject to lease or mortgage, the injury done to such persons respectively may be awarded to them by the commissioners, less the benefits resulting to them respectively from the improvement.

SEC. 16. Having ascertained the damages and expenses of such improvement as aforesaid, the commissioners shall thereupon apportion and assess the same, together with the costs of the proceedings, upon the real estate by them deemed benefitted, in proportion to the benefits resulting thereto from the improvements, as nearly as may be, and shall describe the real estate upon which their assessment may be made. When completed, the commissioners shall sign and return the same to the City Council within forty days of their appointment.

SEC. 17. The Clerk shall give ten days' notice in some newspaper of said city that such assessment has been returned, and on a day to be specified therein, will be confirmed by the City Council, unless objections to

the same are made by some person interested. Objections may be heard before the City Council, and the hearing may be adjourned from day to day. The Council shall have power, in their discretion, to confirm or annul the assessment, or refer the same back to the commissioners. If annulled, all the proceedings shall be void. If confirmed, an order of confirmation shall be entered, directing a warrant to issue for the collection thereof, in accordance with the provisions of any ordinance then in force, regulating the collection of such assessments. If referred back to the same, or other commissioners, they shall proceed to make their assessments, and return the same in like manner, and give like notices as herein required in relation to the first, and all parties in interest shall have the like notices and rights, and the said City Council shall perform like duties, and have like powers in relation to any subsequent determination as are herein given in relation to the first.

SEC. 18. The City Council shall have power to remove commissioners, and from time to time appoint others in the place of such as may be removed, refuse, neglect, or be unable from any cause to serve.

SEC. 19. The land required to be taken for the making, opening or widening any street, alley, lane, or other highway, shall not be appropriated until the damages awarded therefor to any owner thereof, under this act, shall be paid or tendered to such owner or his agent, or in case the said owner or his agent cannot be found in said city, deposited to his or their credit in some safe place of deposit, other than the hands of the Treasurer, and then, not before, such lands may be taken and appropriated, for the purpose required in making such improvement, and such streets, alleys, lanes, highways and squares, may be made and opened.

SEC. 20. When the whole of any lot, or parcel of lands, or other premises under lease or other contract, shall be taken for any of the purposes aforesaid, by virtue of this act, all of the covenants, contracts and

Removal of
Commissioners.

Damages to be
paid or tendered

engagements between landlord and tenants, or any other contracting parties touching the same or any part thereof, shall, upon confirmation of such report, respectively cease and be absolutely discharged. When part only of any lot or parcel of land, or other premises under lease, or other contract shall be taken for any of the purposes aforesaid, all the covenants, contracts, agreements and engagements respecting the same, upon confirmation of such report, shall be absolutely discharged as to the part thereof so taken, but shall remain valid as to the residue thereof, and the rents, considerations and payments reserved, payable and to be paid for, or in respect to the same, shall be so proportioned as that the part thereof justly and equitably payable for such residue thereof, and no more, shall be paid or recoverable for, in any respect of the same.

Appeal. SEC. 21. Any person interested may appeal from any final order of the City Council for opening or widening any street, alley, lane, public ground, or highway, to the District Court of Scott county, by notice in writing to the Mayor or Clerk, at any time before the expiration of twenty days after the passage of such final order. In case of appeal, the City Council shall make return within thirty days after notice thereof, and the court shall, at the next term after return filed in the office of the clerk thereof, hear and determine such appeal, and confirm or annul the proceedings. Upon trial of the appeal, all questions involved in the proceedings, including the amount of damages, shall be open to investigation by deposition or oral testimony, and the burden of proof shall in all cases be upon the city, to show that the proceedings are in conformity with this act.

Infant owner.

SEC. 22. In any cases when any known owner, residing in said city, or elsewhere, shall be an infant, and any proceeding shall be had under this act, the District Court, or the Judge thereof, or the County Judge of Scott county, may, upon the application of the City Council, or such infant, or his next friend, appoint a

guardian for such infant, taking security from such ^{Infants—}_{Guardians for.} guardian for the faithful execution of such trust; and all notices and summonses required by this act shall be served on such guardian.

SEC. 23. Nothing herein contained, or in the acts to which this is amendatory, shall authorize the City Council to DISCONTINUE or CONTRACT any street, lane, ^{Discontinuing streets, &c.}_{(See ante p. 42 and note).} alley or highway, or any part thereof, without the consent in writing of all persons owning land adjoining said street, lane, alley, or highway.

SEC. 24. In all cases where there is no agreement to the contrary, the owner or landlord, and not the occupant or tenant, shall be deemed the person who ^{Who to pay assessment.} ought to pay and bear the assessment made for the expense of any public improvement. Where any such assessment shall be made upon, or paid by any person, when, by agreement, or by law, the same ought to be borne or paid by any other person, it shall be lawful for one so paying to sue for, and recover of the person bound to pay the same, the amount so paid with interest. Nothing herein contained shall impair, or in any way affect any agreement between any landlord and tenant, or other persons, respecting the payment of such assessments.

ARTICLE VIII.

MISCELLANEOUS PROVISIONS.—ROADS AND ROAD TAXES.

SECTION 1. The inhabitants of the city of Davenport are hereby EXEMPT from working on any road beyond the limits of the city, and from paying any tax to procure laborers to work upon the same, and said city is hereby constituted a ROAD DISTRICT, with the powers conferred on any one or more Street Commissioners as the City Council may appoint or provide for the election of, as are now conferred under the laws of the State of Iowa upon supervisors of roads and highways, and the said City Council shall have the same authority to provide for work in the corporate limits of said city, on the streets, lanes, alleys, and public grounds, wharves, landings, avenues and highways as are now by law or hereafter may be

^{City one road district.}

^{Power of Street Commissioner and Council over streets, &c}

- conferred on the several boards of county commissioners, or such other tribunal as the State may provide and clothe with such authority, and they shall provide for the collection and appropriation of such work by ordinance.

Work on
streets.

SEC. 2. The City Council shall have power for the purpose of keeping the streets, lanes, avenues and alleys in repair, to require EVERY MALE INHABITANT in said city, over twenty-one years of age, to LABOR ON SAID STREETS, lanes, avenues, and alleys, not exceeding THREE DAYS in each and every year, and any person failing to perform such labor when duly notified by the Street Commissioner shall forfeit and pay the sum of one dollar per day for each day so neglected or refused.

[The above two sections are in the original charter.]

Road district.

SEC. 4. Said city of Davenport is hereby constituted ONE ROAD DISTRICT, to be under the control and superintendence of one or more Street Commissioners, to be appointed by the City Council, who shall hold their office during the pleasure of the City Council, and not less than one-half of all taxes levied by the city authorities, and the road tax levied by the county authorities for road purposes against the several districts which are annexed to the city of Davenport by this act, or that may hereafter be annexed by extending the limits of said city, shall be expended on the streets and roads of said annexed districts.

Taxes in annex-
ed district.

[The above section is from the amended charter of January 22, 1855. The balance of section 4 and all of section 5 of this amendment, are not printed, being repealed by the amended charter of January 23, 1857.]

Imprisonment
of offenders.

PUNISHMENT OF OFFENDERS.

SECTION 3. The City Council shall have power to provide for the PUNISHMENT of offenders by IMPRISONMENT in the county jail or work-house, or city prison, in all cases where such offenders shall fail or refuse to pay the fines and forfeitures which may be recovered against he, she or them.

[The above is sec. 3, art. 8 of original charter. See, also, art. 5, sec. 2, latter part.]

FINANCIAL STATEMENT—ROAD TAX.

SEC. 4. The City Council shall cause to be published or posted up in each ward of said city annually, twenty days before each annual election for Mayor, a full and complete statement of all moneys received and expended by the corporation during the preceding year, and on what account received and expended, showing the entire indebtedness of said city, and also the amount of road work, from whom received, money paid instead of work, the disposition of said work and money.

[The above is sec. 4, art. 8, original charter.]

SEC. 4. From and after the passage of this act, it shall not be lawful for the county authorities of Scott county to levy a road tax on any property, or a road poll tax on residents in said city: and the said CITY COUNCIL is hereby authorized to levy and collect the road tax, if not more than THREE MILLS on the dollar, on all property liable to road tax within said city, the collection and payment thereof into the city treasury to be regulated by ordinance of said City Council.

[The above section is from the amended charter of January 23, 1857, and is the last charter provision on the subject. The above, on pp. 51, 52 and 53, are all of the provisions now *in force* in the various charters of the city referring to road districts and road and poll taxes].^{*}

* The substance of these various provisions may be briefly stated thus:

1. Davenport is constituted *one road district*.
2. This is *not* under the control of *county* authorities.
3. It is under the control and superintendence of the *city* authorities.
4. City may levy and collect property *road tax* of not more than *three mills* on the dollar.
5. City may also require every adult male inhabitant over 21 years of age to *labor on the streets* not exceeding *three days* in each year.
6. The *county* authorities can levy neither of these taxes within the city limits.
7. The *city* may provide for their collection by *ordinance*.

Statement of
receipts and
expenditures.

City levies its
own road taxes

See p. 51, See,
p. 52, Sec. 4

RECORDS, PROSECUTIONS, &C.

[The following sections are from Art. VIII of the *original* charter, except when otherwise stated.]

Records.

SEC. 5. The City Council shall provide WELL BOUND BOOKS for their own use, and for the use of the officers under their City Charter. They shall cause their Clerk to keep a JOURNAL of the proceedings of their meetings, which shall be SIGNED by said Clerk and the presiding officer of each meeting. He shall also keep a record of the RETURNS OF THE MARSHAL, in which he shall record the number of lot, piece of ground, or description of land or property sold by him for taxes due on assessment, the amount for which it was sold, the time when sold, the purchaser's name, and the time of redemption, when redeemed, for what amount, and the person to whom, and when deeded. And said marshal shall so make his return of the tax lists of each year, as to enable the said Clerk to state the above facts in said delinquent tax book. A book to record the acts and

Record of acts
Street Commis-
sioner.

reports of the STREET COMMISSIONERS, and the name, age, and residence of deceased persons buried in the city cemetery, and when such persons became deceased, and of what disease such person died, if known; also an ORDER BOOK stating the amount allowed each person out of the City Treasury, the name of the person to whom allowed, when, and by whom drawn; they shall also provide the Mayor and his successor in office with a

Mayor's docket. RECORD OR DOCKET, in which he shall record all the proceedings had before him as such Mayor for the violation of ordinances, his judgments, and the reports required to be made to him as such Mayor and Justice of the Peace. All of the books above provided for shall be open to the inspection of the inhabitants of said city at all reasonable hours, free of expense, tax or fee.

Actions.

SEC. 6. All suits, actions and prosecutions instituted, commenced or brought by the corporation hereby created, shall be instituted, commenced and prosecuted in the name of the CITY OF DAVENPORT, and in cases of

WARRANTS the same may be issued for violations of the ~~warrants~~, ordinances, by-laws, rules and regulations of said city without being predicated or based upon affidavit.

SEC. 7. The City Council shall have power to provide by ordinance for FILLING of temporary VACANCIES ^{Filling vacancies.} in any subordinate office, where the same shall occur from sickness, absence from the city, or inability on the part of any officer, or sudden death, until the same can be filled as is provided by ordinance, or another elected.

SEC. 8. The Mayor and Aldermen of the town of Davenport shall cause this act to be published in each of the papers of said town, or they may provide for the publication and distribution of one hundred copies among the inhabitants of said town; and ten days after the publication or the distribution of the copies herein provided for, for an election for or against the ADOPTION ^{Vote for adoption of the} OF THIS CHARTER; such election shall be holden in some ^{charter} public place therein, where all the voters may attend during the day between the hours of 10 A. M. and 4 P. M., and vote by ballot "for new charter" or "against new charter," and if "for new charter" shall have a majority of the votes cast "for" and "against," this charter shall immediately take effect as a law; but if a majority of the votes given be against the adoption of this charter, then this act to be of no effect.

SEC. 9. All ordinances and resolutions passed by the ^{Town ordinances continuing.} Mayor and Aldermen of the TOWN OF DAVENPORT shall remain IN FORCE until the same shall have been repealed by the City Council of Davenport. The boundaries of the wards of the city shall (until otherwise changed by the City Council of the city of Davenport) be the same as those heretofore of the town of Davenport; all actions, fines, penalties, and forfeitures, which have accrued to the Mayor and Aldermen of the town of Davenport, shall be vested in and prosecuted by the corporation hereby created. ALL PROPERTY, real, personal and mixed, heretofore belonging to the Mayor and Aldermen of the town of Davenport, shall be and the same is hereby declared to be VESTED in the corporation ^{Property and rights of town given to city.}

hereby created. This charter shall not invalidate any act done by the Mayor and Aldermen of the town of Davenport, nor divest them of any right which may have accrued to them prior to the passage of this act ; but the same shall inure to and be enjoyed by the corporation hereby created.

Appeal allowed. SEC. 10. APPEALS shall be allowed from decisions IN ALL CASES arising under the provisions of this act or any ordinance passed in pursuance thereof, to the District court of Scott county. Any and every such appeal shall be taken and granted in the same manner and with like effect as appeals are taken from and granted by Justices of the Peace to the District Court under the laws of this State.

[By the amendatory act of January 23, 1857, the following further provision is made concerning appeals: "The said city of Davenport shall have the right of appeal to the District Court of Scott county, from decisions in all cases arising under the provisions of the charter of said city, and the amendments thereto, or of any ordinance passed in pursuance thereof."]

Ministerial officers may act in county. SEC. 10 (*continued.*)—The City Marshal or any officer authorized to execute writs or other process issued by the Mayor, shall have power to execute the same anywhere within the limits of Scott county, and shall be entitled to the same fees for traveling as are allowed to Constables in similar cases ; and in case of the interest, inability or disqualification of the Marshal to act in any station or position hereby created in this act, the Mayor shall have authority to deputise such person as he may think proper, by writing on the process to be served or executed, that such person is so deputised, who shall be vested with all the power and authority of such Marshal for the time being.

Deputy Marshal.

Public act.

SEC. 11. This act is hereby declared to be a public act, and may be read in evidence in all the courts of law and equity in this State without further proof. All acts or parts of acts coming within the provisions or pervue of this act, or contrary to, or inconsistent with

its provisions on the taking effect of this charter, are hereby repealed.

SEC. 12. The Mayor and Clerk shall sign all by-^{Ordinances signed.} LAWS AND ORDINANCES passed by said corporation, and the same shall be carefully filed and preserved by the Clerk. All bills, bonds, notes, drafts or contracts, ^{Contracts.} ordered by said corporation, shall be signed by the Mayor and attested by the Clerk; and all bills, bonds, notes, drafts or contracts so signed or attested, and in case of bonds or contracts under seal, sealed with their common seal, shall be valid and binding on said corporation, in law and equity, in every court in Iowa.

SEC. 13. The SERVICE OF ALL PROCESS AGAINST said ^{Service of process.} city of Davenport, shall be by leaving with the Mayor, or in his absence, with the Clerk, a certified copy thereof, and in case of subpœna in chancery, a certified copy of the bill also.

SEC. 14. No Alderman shall receive any compensation for his services as such, for serving on committees created by the City Council, nor hold any office or station under this charter, unless an ordinance providing for such service and compensation, and the amount of such compensation shall have been adopted by said City Council, and submitted to the voters of said city, and a majority of the votes cast are in favor of the same; but they shall be exempt from the three days' work on the streets, sidewalks and highways herein ^{Exempt from road work.} provided for, and be eligible to act as judges and clerks of elections under this charter.

[The above is section 14, of Art. 8, of the original charter. It was amended by the amended charter of January 23, 1857, as follows:]

Said City Council is hereby authorized to grant and allow, by ordinance, such compensation to the Aldermen of said Council for their services as shall be approved by a vote of two-thirds of all the members elected.—(*Sec. 25 of Amended Charter.*)

SEC. 15. Any FAILURE TO HOLD ANY ELECTION OR expression of opinion provided for under this charter, ^{Forfeiture of charter guarded against.}

shall not operate as a forfeiture thereof, but in case of the Mayor and Aldermen of the town of Davenport failing to provide for the election or vote to be had (herein provided for) by them, the same may be helden on any day thereafter, and the said Mayor and Aldermen of said town shall see that due notice is given, and the election or vote had, which may have been neglected or omitted to be held or had, in this act required of them. And in cases of the failure and neglect after this charter shall take effect, of the City Council, at any time, to hold or cause to be held an election or vote to be had which may be required of them, the same shall work no forfeiture of this charter; but such election or vote may be held at some future time thereafter, as may be provided for by said City Council, nor shall the office of Mayor, Alderman, or any other office become vacant by such failure; but the incumbent of such office, if otherwise qualified, shall continue and be entitled to all the rights and privileges of said office, and exercise the same until his successor shall be duly elected or appointed and qualified.

[The following section creating the office of Police Magistrate is taken from the amended city charter of January 23, 1857.]

Police Magis.
trate.

Jurisdiction.

SEC. 26. At the first election for Mayor and Aldermen, after the taking effect of this act, and every second year thereafter, there shall be elected, by the legal and qualified voters of said city, a Justice of the Peace, who shall reside in, and be a qualified voter of said city, who shall be called a POLICE MAGISTRATE, who shall have and possess all the POWERS AND JURISDICTION of other justices of the peace in Scott county, and CONCURRENT JURISDICTION with the Mayor of said city, in all cases arising under the ordinances of said city, who shall take the same oath of office, and qualify as other justices of the peace of Scott county, and who shall hold his office for the term of two years, and until his successor is elected and qualified.

[The following section is from the amended city charter of January 23, 1857.]

SEC. 2. The City Council shall have power, by <sup>Special grading
and paving tax
&c.</sup> ordinance, to levy and collect a SPECIAL TAX on the owners of lots on any street, lane, avenue, alley, or block, or the side of a block, fronting, or lying on any alley, or part of any street, lane, avenue or alley, according to their respective fronts owned by them, for the purpose of PAVING OR GRADING the sidewalks ; grading, paving, OR MACADAMIZING such streets, lanes, avenues and alleys, or parts thereof, and for lighting the same, on being petitioned so to do by the owners of more than half the property so to be taxed.

[The following section is from the amended charter of January 22, 1855.]

SEC. 9. All the powers provided in the Code for the organization of cities are hereby conferred on the city of Davenport.

ADDITIONAL NOTES TO CITY CHARTER.

SECTION I—POWERS OF CITY.

CHARTER—PUBLIC ACT.—Being a public act, the charter will be judicially noticed without being specially pleaded. 4 Pet., 152, 167; 4 Cranch, 384. *Ante* p. 56.

CHARTER CANNOT BE SPECIALLY AMENDED.—By the new constitution of Iowa the Legislature is prohibited from passing *special* charters for cities, or from passing *special* acts amending the charters of cities. Such acts to be binding must be *general and of uniform operation*. *Ex parte Pritz*, (relating to amendment of city charter of Davenport adjudged unconstitutional), 9 Iowa Rep., 30; and see *Davis v. Woolnough*, 9 id., 104; 10 id., 145, (Dubuque City Court); *McGregor v. Bayles*, (City Court case), 18 Iowa Rep.; 14 Iowa, 214.

MEETINGS, REGULAR, SPECIAL, AND ADJOURNED—NOTICE.—If a quorum be present at a *regular* meeting, absent members are bound, it being their duty to attend; and they are likewise bound by the proceedings of an *adjourned* meeting to complete unfinished business of the first meeting. It has been held (but *quere*) that if *all* are not present at a regular meeting, it is not competent to appoint and hold a future meeting to consider *new matters* unless *all* have actual notice.

Of a *special* meeting all must, certainly if within the city, be notified. *Pope v. Batcheler*, 22 N. Y., 128; see 21 id., 296; 5 Eng. L. and Eq., 16; 12 Met., 99; 4 Cush., 439, 494; 5 Cush., 269; 2 Pick., 345, 355.

Council, at a due and legal meeting, have the right

to *adjourn* to another day, and to another place if within the corporate limits. *Chamberlain v. Dover*, 1 Shep. (Me.) 472; *People v. Martin*, 1 Seld. (N. Y.) 22; 41 Maine, 241; 12 Metcalf, 99; 2 Pick., 397.

QUORUM OF COUNCIL.—That less than a quorum was present may be shown by oral evidence, (13 Ind., 58), if it does not appear of record; and if shown, the acts are void. 20 Ind., 315. *Ante* p. 29, note.

ADOPTION OF CHARTER BY VOTERS.—Submission of charter to voters for adoption. *Foote v. Cincinnati*, 11 Ohio R., 408.

CITIES AND COUNTIES, &c., DISTINGUISHED.—Distinction between *municipal corporations* proper, such as cities, and involuntary *quasi corporations*, such as townships, counties, and school-districts, see *Commrs., &c., v. Michels*, 7 Ohio St. Rep., 109, 116, 118, per BRINKERHOFF, J.; 12 id., 375.

AYES AND NAYS.—Charter provision requiring ayes and nays to be called, held directory and not mandatory. 7 Hill, 9, 24, 29; S. C. 2 Denio, 323; 2 Hill, 20; 25 Wend., 693.

CITY COUNCIL—MUST ACT OFFICIALLY.—Acts and contracts of even a majority of Aldermen *out of session* and without any *official* action of the Council are not binding upon the city. 7 Gray, 12; 13 Id. 347.

ACTION OF COUNCIL DE FACTO.—The action of a *de facto* council or alderman is valid. 5 Hill, (N. Y.) 616; 17 Ohio Rep., 143; 6 Wend., 422; 9 Johns, 147; 16 Iowa, 369; 7 Cow., 23; 21 Pick., 75. This rule would not apply to mere *usurpers*.

POWER NOT TO BE DELEGATED.—A City Council cannot delegate even to the Mayor *its legislative and discretionary* power. 4 Cush., 433 and cases. See, also, 5 Cush., 269; 11 Cush., 433.

CITY CANNOT LEND ITS CREDIT.—City cannot lend its credit, or make accommodation paper. *Clark v. Des Moines*, 19 Iowa Rep.

DISSOLUTION OF CORPORATION.—Corporation is not dissolved by the resignation of its officers. *Turn Verein v. Funck*, 18 Iowa Rep. How dissolved, 24 Pick., 52; 5 Mass., 230, 232; 7 Mass., 169; 22 Pick., 122; 18 How., U. S. Rep., 480, (question largely discussed).

CONTRACTS, DEEDS, &c.—Persons cannot contract with a municipal corporation, except through its authorized agents, and they are chargeable in law with notice of the limitations of official authority imposed by general laws. *Donovan v. Mayor, &c., of New York*, 33 N. Y. Rep., 291, 293, per PORTER, J., and cases cited.

PAYMENT OF CONTRACTORS.—Where equitable, a corporation may voluntarily increase compensation of contractor. *Meech v. Buffalo*, 29 N. Y. Rep., 198; see also 13 N. Y., 143; 19 id., 116.

CONTROL OVER CONTRACT.—A reservation by city of the right to make alterations in work, is binding; but such reservation does not authorize it to annul the contract, or stop the work in an unfinished state. *Clark v. The Mayor*, 4 Comst., 328.

CONTRACTS—RATIFICATION.—Council may ratify unauthorized acts of its agents which are within the corporate powers. For this doctrine and its limitations, see 17 N. Y., 449; 19 id., 207, 208; 2 Denio, 110; 5 id., 567; 17 N. Y., 584; 20 id., 312; 2 Hill, 159, 176; 8 Am. Law Reg., 693; 8 Fost., 65; 32 N. H., 118; 35 id., 477; 1 Pick., 372; 7 Cranch, 299; 2 Fairf. (Me.,) 60. Limitations on this doctrine, stated by DENIO, J., 17 N. Y., 449, 454; 4 Cush., 494.

CONTRACTS—ACCEPTING WORK.—Effect of accepting work not authorized, or not done according to contract and by whom accepted, see 32 N. H., 125; 7 N. H., 15; 6 N. H., 15; 13 Pick., 343; 14 Maine, 20, 25; 30 ib., 157, 160; 15 id., 306, 308; 38 id., 164; 2 Cush. 419, 426; 4 Cush., 494; 13 Gray, 347.

MARKET HOUSE, TOWN HALL, &c.—Power of cities and towns to provide for city or town hall, market

house, public clock, scales, and the like, but not for theatres, celebrations, and the like, see 13 Mass., 272; 19 Pick., 485, 487; 23 id., 71; 12 id., 227, 230; 10 Cush., 252; 4 Gray, 502; 23 Pick., 71; 2 Denio, 110; 1 id., 510.

CORPORATE SEAL— IMPLIED PROMISES.—The city, within the scope of its powers, may bind itself by a vote, and the authentication of its acts by its corporate seal is not indispensable. It is in certain cases liable upon *implied* as well as upon *express* promises. *City of Davenport v. Ins. Co.*, 17 Iowa Rep., 276, citing many of the cases establishing the above principles of law.

DEEDS—HOW AND BY WHOM EXECUTED.—Where the city charter, which is a public law, authorizes the appointment of a Mayor *pro tempore*, a deed offered in evidence purporting to have been executed by such an officer, on which the seal of the corporation is duly affixed, and the execution duly attested by the Recorder, and which was properly acknowledged and recorded, the officer certifying in the acknowledgment that the person executing the deed for the corporation was personally known to him as the identical person whose name is affixed to the deed as President *pro tempore* of the City Council and acting Mayor of the city, and that he acknowledged the instrument to be his voluntary act and deed as such President and acting Mayor, &c.: shows *prima facie* the party thus executing such deed was at the time the Acting Mayor of the city, and may be admitted in evidence without further proof as to the official character of such Acting Mayor. *Middleton Bank v. Dubuque*, 19 Iowa Rep. (This decision is applicable under the charter of the city of Davenport.)

REAL ESTATE.—A city may hold property *in trust* for purposes not foreign to its institutions and powers: as receiving land to build city hall and for other public purposes. 8 Johns., 422; id., 385; 4 Ohio R., 157; 9

Johns., 73; 2 Wend., 109; 7 Johns. Ch. R., 292; see city charter and notes *ante*.

LICENSE POWER OF CITY VALID.—Power to a city “to license, tax and regulate hawkers, transient merchants, pedlars and pawnbrokers,” is not unconstitutional. *City &c., v. Clutch*, 6 Iowa Rep., 546. (This is applicable to Davenport, whose charter contains a similar authority.)

POWER OF CITY TO LICENSE RELAILERS OF LIQUORS, &c.—In the *City of Burlington v. Keller*, 18 Iowa Rep., 60, the Supreme Court decided the following important questions—closely applicable to many question which may arise under the charter of Davenport and future ordinances:

1. *Intoxicating Liquors—Repeal of City Charter.* So much of section 15 of chapter 54 of the laws of 1845 (Burlington city charter), as conferred upon the common council of the city of Burlington the power to grant licenses to “retailers of spirituous liquors by less quantity than a quart, keepers of ale and porter houses,” was repealed by section 936 of the Code of 1851.

2. ——*Non-revivor of statute.* The provisions of chap. 143 of the laws of 1857-8, making the “manufacture and sale of beer, cider from apples, or wine from grapes, currants or other fruits grown in this State,” lawful, did not revive the provisions of said charter, repealed by the Code of 1851.

3. ——*Statute construed.* Section 15 of chapter 54 of the laws of 1845, conferred upon the city of Burlington the power to grant or refuse licenses to tavern-keepers, inn-keepers, retailers of spirituous liquors by less quantity than a quart, keepers of ale and porter houses, and shops and all other houses of public entertainment.” After its enactment the legislature of the State made the sale of intoxicating liquors illegal, and repealed that portion of the above act that authorized a license for the sale thereof: *Held*, that subsequent legislation did not confer upon the City Council power

to grant or refuse licenses for the sale thereof under the unrepealed authority to grant or refuse licenses "to all other houses of public entertainment."

4. *Construction of Statutes—History.* In construing the language of a statute the history of the legislation affecting such statute will always be considered.

5. —*Effect of partial repeal.* The repeal of a part of a statute cannot have the effect to so enlarge the meaning of the language which remains as to make it include all that was in the statute before the repeal.

6. *Corporations—Powers.* Authority conferred upon municipal corporations is to be strictly construed and closely pursued.

7. *Burlington—Ordinance invalid.* The ordinance of the city of Burlington, passed Nov. 3d, 1862, prohibiting within said city the keeping of "any house or place where persons resort for the purpose of drinking wine, beer or ale or other malt or spirituous drinks," without a license from the authorities of said city, is invalid, and no prosecution can be sustained thereunder.

8. *Statute—Conflict with ordinance.* Where a statute of the State conflicts with the ordinance of a municipal corporation, the former prevails.

9. *Municipal Corporations—Imprisonment.* A municipal corporation can inflict imprisonment as a penalty for a violation of its ordinances, only when the power is given by the charter.

10. —*Power to regulate sale.* A municipal corporation, invested with the necessary power in its charter, may regulate the sale of intoxicating liquors within its limits, to the extent of prohibiting such sale by persons who are not licensed therefor, though the sale of such liquors be not prohibited by the laws of the State."—See *State v. Harris*, 10 Iowa, 441. *State v. Gurlock*, 14 Iowa R., 444.

LICENSE.—WHAT POWER IS GIVEN. Under authority

“to license and regulate,” city may require license to be taken out and charge a reasonable sum for issuing the same, but this does not authorize a *tax* upon the occupation thus licensed. When right to tax or require a license exists see *Cin. v. Bryson*, 15 Ohio R., 625; (*quere* as to result upon the facts.) See, also, 1 Ohio St. R., 268; compare 11 id., 534 and see 10 Ohio R., 261; 3 B. Mon., 133; 11 Gill & J., 506; 1 Humph., (Tenn.) 240; *Jonas v. Cin.*, 18 Ohio, 318; 5 Cow., 462. (By the city charter of Davenport, (Art. 5, Sec. 2,) express power is given “to license, TAX and regulate” various employments—thus conferring the power to *tax* in express words).

GARNISHMENT OF CORPORATIONS.—Garnishment of Mayor, Recorder, and Treasurer of a city, by notice to them as such officers, is not a garnishment of the corporation. *Claflin v. Iowa City*, 12 Iowa Rep., 284; see Revision 1860, Sec. 3196; compare *Burton v. Dist. Town. &c.*, II Iowa Rep., 166; *Wales v. Muscatine*, 4 id., 302.

// SCRIP—CAN’T PAY JUDGMENT IN.—City cannot compel judgment creditor to take scrip in payment of his judgment. *Clark, Dodge & Co. v. Davenport*, 12 Iowa Rep., 335.

NUISANCES.—Manner of enforcing fines under Chap. 42 of Code 1851. *Gosselink v. Campbell*, 4 Iowa Rep., 296.

STATUTE OF LIMITATIONS.—Decided in Ohio that municipal and public corporations are within the statute of limitations the same as natural persons. *Cincinnati v. The Church*, 8 Ohio R., 298, 1838; followed in *Same v. Evans*, 5 Ohio St. R., 594, 1855. (There may be some doubt as to, or limitations upon this doctrine.)

APPROPRIATIONS OF MONEY.—City Council have no power to provide public entertainments for guests at expense of city, or appropriate money to celebrate the 4th of July—these not being among its granted powers. *Hodges v. Buffalo*, 2 Denio, 110; 1 Denio, 510.

RECOVERING BACK MONEY.—If city pays money voluntarily without any fraud or mistake of fact, it cannot recover it back though the claim could not have been legally enforced against it. 9 Cow., 674; 1 Wend., 355; 2 Denio, 26, 40; 2 Hill, 135; 39 Maine, 183; 41 Maine, 246. (See City Charter *ante* and notes.)

REWARDS.—City may offer rewards in cases in which it has an interest. 7 Gray, 272; 5 Cush., 219; 7 Gray, 374, (reward for incendiary).

RIOTS—MOBS.—Authority of city to suppress riots, see (*Anthony Burns case*) 5 Gray, 121.

AMOUNT OF DEBT—LIMITATION.—Limitations upon corporations respecting amount of indebtedness they may create, see *Wyncoop v. Church*, 10 Iowa Rep., 185; *Gas Co. v. Davenport*, 13 id., 229; *Rice v. Keokuk*, 15 id., 579; 24 How., 287; compare 11 Ohio St., 183; *Avery v. Mayor*, 24 How. (U. S.), 372; *Jones v. Cin.*, 18 Ohio, 318, 322; 17 N. Y. Rep., 110; 1 Clinton's N. Y. Dig., "Buffalo," Sec. 2.

The constitutional limitation on *State* indebtedness does not, it is held in Ohio, apply to towns and cities. *Cass v. Dillon*, 2 Ohio St. R., 607.

TAXATION AND LOCAL ASSESSMENTS.—What may be taxed under power to tax "all property *within* the city," 14 Ind., 27, 354; 21 Ind., 261, (bank stock); 21 Ind., 335, (pork killed and stored in city); 18 Ind., 33.

TAXATION.—City cannot discriminate and levy a general tax upon the *real*, thereby exempting the personal property. 2 Black, U. S., 510; 9 Wis., 410; 10 id., 242, 282; 5 Ohio St., 589; 3 id., 1.

TAXATION.—GENERAL LAWS OF STATE.—How far the general laws of the State apply to cities, see 20 N. Y. Rep., 387; id., 388, *note*, and remarks of Denio, J., p. 391; and see 10 Wend., 186; 1 N. Y., 451; compare 17 Wend., 234, 19 Johns., 248.

MANDAMUS TO LEVY TAX, &c.—Mandamus to compel

levy of tax, when? see *The State v. Com.*, 6 Ohio St. R., 280; 8 id., 347; 1 id., 149; 19 Ohio, 415.

To compel the drawing of an order, when? 1 Ohio St., 322; 19 Ohio, 116.

LOCAL IMPROVEMENT.—In making local improvements the city must *strictly* pursue the power given it. And the same rule applies to its exercise of the right of eminent domain. 2 Seld., 92; 9 Barb., 152; 23 Wend., 458; 4 Denio, 520; 4 Hill, 76; 15 N. Y. 512; 17 N. Y., 383; 8 id., 120; 3 Johns. Cas., 107; 1 Seld., 434; 8 Ind., 34, 37; 4 Hill, 92; 12 Wheat., 40; 17 Ind., 169; 29 N. Y., 198.

AMOUNT OF PROPERTY REPRESENTED.—Number of owners and of feet to be represented, see 8 Ind., 34; 15 Ind., 112.

LOCAL ASSESSMENTS.—RE-ASSESSMENT.—Re-assessment for local improvement, when lawful? *Butler v. Toledo*, 5 Ohio St. Rep., 225.

When assessment is a *personal* charge, see 17 N. Y., 383; 12 N. Y., 140.

SECTION 2.—RECORDS.

RECORDS—UPON WHOM BINDING.—Records of a public corporation not binding upon third persons, who may ^{col.} show ^{the truth in evidence.} This is clearly the case where *Westerh. v. Cline*, 5 Ohio R., 136; 8 id., 310; 9 Iowa, 511; 1 Cart. (Ind.), 281; compare 15 Wend., 397.

RECORDS—PAROL EVIDENCE.—As to parol evidence of acts of corpor. ^{ations}, see 12 Wheat., 64, 74, per STORY J.; 12 Ind., 46; Redf. on Railways, p. 21, note; 1 Ind., 281; Angel & Ames, Corp., 270; 8 Ind., 504; 507; 17 Ind., 175; 74; 6 Pick., 16; 18 Maine, 344; id., 296; 13 Maine, 74; 42 id., 395; 35 id., 373. As 17 id., 444; 36 id., 74; to conclusiveness of records of facts appearing on their face, see 11 Ind., 424; 5 Ohio, 358; 17 Ill., 151.

RECORDS—AMENDMENT OF.—Records of corporation may be amended according to the facts, by the person in office at the time. 11 Mass., 477, 481; 21 Pick., 75; 12 Met., 105; 13 Me., 466; 11 Fost., 501; 8 id., 58, 66; 9 N. H., 168; 10 N. H., 291; 12 N. H., 340; see practice when officers out of office, 37 N. H., 306, 311.

RECORDS—MANDAMUS.—Delivery to official successor will be enforced by mandamus. 3 Mass., 285; 19 N. H., 215; 2 Pick., 397; 21 Pick., 148; 7 Cush., 226, 239; 14 Gray, 163. See 17 Iowa, 525 (as to replevin), and compare 21 Pick., 148; 44 Maine, 374; 3 Cush. 549.

SECTION 3.—WHARVES, DOCKS AND PIERS.

LICENSE FROM OWNER OF LAND NOT DEMANDABLE.—A wharf license, it seems, cannot be required from the riparian owner for *his own boat*, fastened to his own land, though within the city limits. *McLaughlin v. Stevens*, 18 Ohio R., 94; see 11 id., 138; 1 Ohio St. R., 222. Wharves and piers, see further, 13 Wend., 289; 2 Denio, 625; 11 N. Y., 115; id., 461; 1 Caines' Rep., 543; 5 Sandf., 16; affirmed 10 N. Y., 567; 7 Hill, 429; 5 id., 71; 9 Wend., 571; 4 id., 4; 8 Cow., 146; 24 How., 188; 19 id., 263; 17 id., 426.

WHARVES—PUBLIC AND PRIVATE.—See 1 Black (U. S.) Rep., 23.

WHARF—LIABILITY OF CITY.—A city is liable for special injury for neglecting to keep its toll or pay wharf in order. 22 Pa. St., 54, commented on; 36 N. H., 284, 295.

“RESERVED LANDING”—WHARF AND WHARFAGE.—*In Grant, Receiver, v. City of Davenport*, (18 Iowa Rep. 179), the Supreme Court decided the following points with respect to the property known as the “Reserved Landing” and the right of the city to collect wharfage thereat; the decision denying the right of the city to collect wharfage at that landing, but perhaps not deciding upon the right of the city to require boats,

except those of the owner of the private wharf, to land at the public wharf. The questions decided by the Court are thus stated by the Reporter:

Grant, Receiver, v. The City of Davenport, 18 Iowa Rep., 179.

1. *Dedication—Wharf; Municipal Corporation.* The proprietor of lands, in laying out and platting the same, as an addition to an incorporated town, by the plat declared that the "streets, roads, alleys, and public grounds are donated, granted, appropriated to public purposes, for the uses therein specified," but marked one tract, which was bounded on three sides by public streets and on the fourth by a navigable river, by lines which separated it from the streets, and by the words "Reserved Landing." *Held*, that the donor retained the title and the right to use the tract so reserved for his own benefit, to the exclusion of the public.

— The case of *McManus v. Carmichael*, 3 Iowa, 1, considered and distinguished; and *Cowles v. Gray*, 14 Iowa, 1, cited and followed.

2. *Estoppel—Corporation.* The proprietor, in platting an addition to an incorporated town, marked a certain tract of land bounded on one side by a navigable river, "Reserved Landing;" the council of the corporation, by ordinance, released to the owner, as to a portion of said land, "all right and claim of the corporation to control said property, or the use of any part thereof, further than the right of said corporation over any other private property within the limits of said corporation," which release was subsequently extended by ordinance to all of said property;—after which the said corporation authorized the erection of mills on said premises, by the grantees of said owner, and also of a bulkhead to protect the landing thereon; and the county commissioners, in the exercise of a power conferred by law, declared said landing vacated as a part of the plat of said corporation; the grantees of the original owner thereafter erected mills and made other improvements

on said premises, and remained in the use and possession of the same for a long series of years. *Held*, that said corporation was by its own acts estopped from denying the right of the owners of said "private landing" to its exclusive use.

Argu. 1. Corporation—parol contract.—A release by a municipal corporation of a claim to the use of real property, by ordinance and not by deed, will be enforced by a court of equity when the releasee has paid the consideration, or entered into the possession and made valuable improvements.

3. *Wharf—private.* When a private wharf was erected upon land within the limits of a municipal corporation, but which was not dedicated to the public use, the council of which was authorized by its charter "to regulate public wharves and landings, and to regulate the erection and repair of private wharves, and the rate of wharfage thereat," and also "to make wharves in the river, and to alter, widen, control, straighten and discontinue the same," under which it improved the public wharves, and permitted the improvement of such private wharf by the owners thereof at a heavy expense; and such owners remained in the undisputed possession of the same, using it with the public for a long series of years, asserting however their exclusive right where the necessities of their business demanded it, it was held that the corporation could not, without compensation to such owners, appropriate to its own use the benefits of such wharf by demanding and receiving wharfage of the steamboats landing thereat.

4. — *Riparian Owners.* The riparian proprietor of land situated outside of an incorporated town or city has a right to erect private wharves or landings on the shores of navigable waters, if they conform to the State regulations (if any) and do not obstruct the paramount right of navigation; but wharves erected within the corporate limits of any town or city must yield to the paramount right of the corporation, when granted by the law by which the corporation is created.

5. — *Power to Regulate.* The power conferred

upon a municipal corporation to regulate the repairs and rates of wharfage charged at a private wharf does confer the power to destroy them. (18 Iowa R., 179).

For action of town council of Davenport in relation to "Reserved Landing" see records of June meeting, 1846, and of June 25th, 1847.

POWER OVER RIVER.—The charter gives the city full power to prevent obstructions to the navigation of the river, and to abate and remove them even though the party erecting is the owner of the adjacent land. *Hart v. Albany*, 9 Wend., 571—valuable case, affirming S. C. 3 Paige R., 213, relating to a floating store house.

SECTION 4.—CITY OFFICERS; DUTIES AND LIABILITIES.

MAYOR—POWER AND DUTIES.—The powers and duties of Mayor depend entirely upon the charter and ordinances. 12 Ind., 569; 14 id., 93. As to office of Mayor, consult 4 Jac. Law Dict., 264; 21 Me., 550; 14 Ill., 419; 4 Dall., 229; 3 Yeates, 300; 3 Harring. (Del.), 294; *Achley's case*, 4 Abb. Pr. Rep., 35.

MAYOR—JUDICIAL JURISDICTION.—The Mayor, though a citizen of city, may be invested with lawful authority to try complaints for violation of ordinances. *Thomas v. Mt. Vernon*, 9 Ohio R., 290.

MAYOR'S JUDICIAL DUTIES—ABSENCE OR INABILITY.—If charter authorizes a Justice to act when Mayor is absent or unable to do so, the record should show that fact. *Muscatine v. Steck*, 7 Iowa, 505; see and compare *Corbin v. Hills*, 19 Iowa Rep.; *Dubuque v. Rebman*, 1 Iowa Rep., 444.

APPEAL.—Under the city charter of Davenport, an appeal lies from decisions of Mayor or Police Magistrate to District Court. See also *Dubuque v. Rebman*, 1 Iowa R., 444; *S. B. v. Shaw*, 2 G. Greene, 91; *Conboy v. Iowa City*, 2 Iowa Rep., 90.

ELECTION—ELIGIBILITY.—Law stated where highest candidate is ineligible; must there be a new election,

or is the highest eligible candidate elected? This depends on circumstances. 14 Ind., 93; 12 Geor. R., 23; 1 Chandl. (Wis.), 112; Grant on Corp., 208; Cush. Law of Legisl. Ass., 66, 67; 10 Ind., 62.

VACANCY DEFINED.—7 Ind., 326. (See City Charter as to vacancies in certain cases.)

WHEN IT MAY NOT INDEMNIFY ITS OFFICERS.—City cannot indemnify officers in suits in which it has no interest and which can in no way affect the right of the corporation. 3 Comst., 430; 5 Barb., 218; 3 Denio, 381; 6 Hill, 244; 5 Denio, 517, 521. But may indemnify them for official acts done in good faith. 12 N. H., 278 (tax collector case); 7 Pick, 18; 18 Pick., 566; 19 Pick., 516.

COUNCIL—PERSONAL LIABILITY.—If Council makes a contract not authorized, the city is not liable. Are the officers personally liable? Where there was on both sides an innocent mistake of law and no personal liability looked to, it has been decided that they are not individually liable. 18 Ind., 396; see 2 Ind., 327; also 3 N. H., 55.

Personal liability of city officers for refusing to levy a tax, see *Oswald v. Thedinger*, 17 Iowa Rep., 13.

MUNICIPAL LIABILITY FOR ACT OF OFFICER.—The general principle rendering the master liable for the tortious acts of his servants committed in his service, does not apply to the wrongful acts of the officers of a municipal corporation, who are elected for a definite term, during which they are restrained and governed only by the statutes which prescribe their duties, which statutes by presumption of law are known to, and by the exercise of a reasonable diligence may be practically understood by every one who may have business with them. 18 Iowa Rep., 199.

A county or city is not liable to a tax-payer for monies fraudulently collected by the Treasurer as taxes, and applied to his own use. *Estep v. Keokuk Co.*, 18 Iowa, 199.

OFFICER—REMOVAL—NOTICE.—The power or body that appoints may accept resignation, which need not be in writing. 2 Hill, 243; 20 Wend., 595; 2 Hill, 93.

Power to appoint, in general, implies power to remove. 5 Barb., 43; see 4 E. D. Smith, 563.

(Aldermen should address resignation to City Council).

OFFICER—REMOVAL—NOTICE.—Officer removed by Council is entitled to *actual* notice thereof, and to compensation until he receives such notice. *Jarves v. Mayor*, 2 N. Y. Leg. Obs., 396. Amotion generally, see 13 Wend., 473; Angell & Ames on Corp.

VACANCY—REMOVAL.—Permanent removal from city vacates office. 1 Pick., 129; 10 N. II., 567; 11 Fost., 304; (see also special provision in city charter as to removal of Aldermen from ward).

ARRESTS BY MARSHALS.—Arrests by Marshals are to be viewed with reference to the general law. If on Sunday, he should ordinarily take party at once to the magistrate, and not imprison him till Monday. 16 Ind., 486; 3 Ind., 475; id. 479.

COMPENSATION OF CITY OFFICERS.—The officers of a city must look for their right to compensation and the amount of it to the charter and ordinances. There is no implied liability on the part of the city. If not expressed in charter or ordinance, it does not exist. *Baker v. Utica*, 19 N. Y., 326; 1 Hill, Rep., 362; 11 Paige, 596.

Compensation may be changed at pleasure by the Council, even as to existing officers. 1 Seld., 285; 7 Hill, 81; 2 Denio, 272; 21 Wend., 563; 1 Hilton (N. Y.), 483.

Salaried officer cannot legally claim *extra* pay because duties of his office have been increased since the salary was fixed. 1 Hill (N. Y.), 362; 2 Sandf., 318; compare 12 Wend., 257, (where the duty was *outside* his regular duties), 18 Johns., 242; 2 Cow., 531; id., 533; *White v. Polk Co.*, 17 Iowa, 413.

The appointment by a Council of a city officer, *e. g.* Engineer, for a fixed time (one year), at a fixed price (\$1,000), constitutes a contract. So held in 7 Gray, 33.

The right of officer to pay must be given in the charter or ordinances, or it does not exist. 13 Gray, 347.

CITY TREASURER—LIABILITY OF CITY FOR HIS ACTS.—City not liable for acts of its Treasurer outside the scope of his power. 7 Wend., 254; 2 Denio, 473, and cases; 3 N. H., 57, 59; 4 Allen, 195.

LIABILITY FOR ACTS OF OFFICERS AND SERVANTS.—As to corporate liability for acts of its officers, see further, 19 Pick., 511; 41 Maine, 363; 45 id., 496 (important case); 32 Maine, 431 (private railway case distinguished from 19 Pick., 511); 18 Iowa, 199.

RESPONDEAT SUPERIOR.—“*Respondeat superior*” when applicable to cities, that is, when cities are liable for the acts of their agents and officers, see 3 Hill, 612, 618; id., 531; 2 Denio, 433, and cases cited. See particularly 17 N. Y., 104. Rule stated in 3 Gray (Mass.), 349; approved by U. S. Supreme Court, 2 Black, 418. (*Chicago v. Robbins.*) See also 1 Allen (Mass.) 101; 10 Met., 108; 4 Allen, 195, 197; id., 57; 3 id., 166; 2 Denio, 433, 447.

City not liable for assault committed by police officers in enforcing an ordinance. *Buttrick v. Lowell*, 1 Allen (Mass.), 417; see 4 id., 41, 52; 32 N. H., 435; 34 id., 306, 312, and cases; 7 Gray, 464; 19 Pick, 511; id., 147; 4 Gray, 465.

POLICE OFFICERS.—These officers are not known to the common law, and can only exercise the powers granted them by statute and ordinances. 12 Met., 233; 9 Metcalf, 259.

SECTION 5.—DEDICATION OF PROPERTY TO PUBLIC USE.

DEDICATION—STREETS, &c.—If owner plats street and sells lots accordingly this establishes a dedication of the street to the public. Mere platting, without sale, not

sufficient. *United States v. Chicago*, 7 How. R., 185, 196; 4 Paige R., 510; 6 Pet. (U. S.) Rep., 498, 506; 10 id., 718; 21 N. Y., 474; 5 Denio, 9, 19; 19 Wend., 128; 1 Hill, 189, 191; 17 Wend., 649; 11 id., 486; 6 Ohio, 298; 7 Ind., 38; 15 Ind., 201; 2 Ind., 420; 7 Ind., 641. *Width* of streets dedicated, see *McLaughlin v. Stevens*, 18 Ohio R., 94, and cases cited. *Cul de sac* strip, 21 N. Y., 474.

Public Grounds—adjacent owners.—The purchasers of property who acquire title with reference to a plat of the town in which it is situated, also acquire as apurtenant thereto a vested right in and to the use of adjacent grounds designated as public grounds in such plat, which right cannot be divested by the owner making the dedication, nor perhaps by the town in its corporate capacity. *Leffler v. Burlington*, 18 Iowa, 361.

DEDICATION OF STREETS—ACCEPTANCE NECESSARY.—Where streets are dedicated by private persons, there must be an *acceptance* by the proper local authorities in order to impose upon the city a liability for want of repair; but this acceptance may be expressed or implied. 42 Maine, 9; 40 Maine, 154; and see 2 Seld., 257; 1 Rho. Is., 93; 5 Strobh., 217; 8 Gratt. (Va.), 632; 5 Cush., 1; 27 Vt., 443; 19 Conn., 154; 2 Greenl. Ev., Sec. 662; 19 Pick., 415; 13 Met., 10; 8 Cush., 195; 5 Gray, 73; 7 id., 338; 11 N. H., 413.

Dedications for “burying grounds,” 6 Hill, 407. “Public Squares,” 4 Paige, 510; 9 Ohio, 80; 6 id., 298; 18 Ohio, 18; 7 Ohio, pt. 1, page 88; 2 Verm., 480; 3 id., 521, 530; 6 id., 355; 4 Paige, 510; 7 Ind., 641; meaning defined, 8 Ind., 174; see 7 id., 9. “Court houses,” &c., 5 Ohio, 204; 6 id., 101, 298, 305. “Public landings,” 20 Wend., 111; 22 id., 425; full discussion of law and cases. “Market space,” 12 Ind., 620.

DEDICATION—PAROL EVIDENCE.—Parol evidence is not admissible to establish intention of donor in dedicating squares or streets. *Brown v. Manning*, 6 Ohio R., 298. But dedications may be proved by parol evidence. 7 Ind., 641; 9 B. Mon., 200.

Statutory and common law dedications distinguished in *Village of Fulton v. Mahenfield*, 8 Ohio St. R., 440; *State v. Hill*, 10 Ind., 2, 9; 8 Ind., 425.

DEDICATION—REVERTER, WHEN.—The property reverts to original owner only when the public use becomes impossible, but not upon a mere misuse. Equity will relieve against a misuser and compel the city observe the trust. *Barclay v. Howell's lessee*, 6 Pet., 507; *Williams v. The Church, &c.*, 1 Ohio St., 478; *Webb v. Moler*, 8 Ohio R., 552; 4 id., 514; 6 id., 298; 7 id., pt. 1, page 217.

Public squares may be enclosed by city. Uses of squares defined, *Langley v. Gallipolis*, 2 Ohio St. R., 107; *Cone v. Alburger*, 1 Whart. (Pa.), 469.

DEDICATION—DOWER.—Widow has no dower in land dedicated for streets and squares. *Gwynne v. Cin.*, 3 Ohio Rep., 25. So when lands are condemned and paid for by city, for streets or other public use, widow has no dower. *Moore v. Mayor*, 8 N. Y., 110; see 7 id., 314.

SECTION 6.—STREETS, BRIDGES, &c.

LAYING OUT AND OPENING STREETS—LAW TO BE CLOSELY FOLLOWED.—In taking private property for public use the charter and ordinances must be *strictly* pursued. *Harbeck v. Toledo*, 11 Ohio St. R., 219; 8 id., 333; *Dyckman v. Mayor*, 1 Seld., 439; *State v. Jersey City*, 1 Dutch. R., 310; *Cin. v. Coombs*, 16 Ohio, 181.

Private property cannot be taken for *private* purposes. *Reeves v. Wood Co.*, 8 Ohio St. R., 333, 345.

LAYING OUT STREETS—CONFIRMATION OF REPORT OF JURY.—*Confirmation* of report of assessment of jury, when binding upon city, so as not to be within power of Council to set aside, see *State v. Keokuk*, 9 Iowa Rep., 438.

“Opening” street defined. 18 Ohio R., 161.

OPENING STREETS—CONDITIONS.—If a city accepts the

proposition of a land owner to give, free of charge, certain land for a street, if the city will do so and so, and it complies, he is estopped to claim damages for his land. *Crockett v. Boston*, 5 Cush., 182.

COUNTY ROADS WITHIN CITY LIMITS.—As to power of county to lay out roads and erect bridges within limits of a city, see *Wells v. McLaughlin*, 17 Ohio, 99; id., 101; *Barrett v. Brooks*, 19 Iowa Rep.; *Knowles v. Muscatine*, 19 Iowa Rep. (affirming the right in that case.) See *Mullion v. Black Hawk County*, Sup. Court of Iowa, DECR. T., 1866, as to liability of county for bridges *within* city limits.

TREES IN STREETS PROTECTED.—It is competent for cities to impose a penalty upon persons who mutilate or destroy shade trees in streets, sidewalks or squares; and it is no defense, it seems, that the trees destroyed stood upon the street in front of the lot of the accused. *State v. Merrill*, 37 Maine, 329.

OPENING STREETS—BENEFITS ASSESSED.—It has been decided in New York, upon great consideration, that a law or charter which authorizes the *expense* of opening streets to be assessed upon property owners benefitted, in proportion to the amount of such benefit, is not unconstitutional. *People v. Mayor*, 4 Comst., 419—everywhere recognized as the leading case on this subject; 19 N. Y., 116, 118; 13 id., 143; 8 id., 241, 251; 1 Ohio St., 126, 135; 3 Wend., 452; 23 Wend., 458.

BUILDINGS IN STREET.—A city cannot authorize the erection of a private building, if indeed any kind, upon a public street. *Stetson v. Faxon*, 19 Pick., 147.

STREETS—RIGHT OF FREE TRANSIT—LIMITATIONS ON THE RIGHT.—The streets should be left free and open to the public, and it is a right of the public to have them so left, with this limitation: that the street may be improved and temporarily occupied by building material, provided that this be placed in the most convenient manner and for a reasonable time. But this will not

justify leaving the street in an unsafe and dangerous condition. The law on this subject is well stated in the following cases: *Com. v. Passmore*, 1 Serg. & Raw. Rep., 217; approved *People v. Cunningham*, 1 Denio, 524, 530; *Clark v. Fry*, 8 Ohio St. R., 358, 374; 2 id., 536.

If the owner of lot digs a vault or pit, or otherwise makes the street or sidewalk dangerous, and does not guard same, the party injured may sue him, or the city may, if it is compelled to pay, recover over against the author of the dangerous place. *Sawyer v. McLoskey*, 2 Ohio St. R., 536; 2 Black (U. S.), 418.

BUILDING MATERIAL ON STREET.—Where street is incumbered by building material, *pursuant to ordinance*, held to protect the party from liability for an injury suffered by third persons, 17 Ind., 515; see 10 id., 181, *quere*.

LIABILITY FOR WORK ON STREETS.—A city is not liable for work upon the streets where the municipal officers contracting for such work had no authority to do so. *Donovan v. Mayor of N. Y.*, 33 N. Y. Rep., 291.

NUISANCES ON STREETS.—Power of city over streets and highways to abate nuisances, and what are such, see *Davis v. Bangor*, 42 Maine, 522, 527, and the many cases there cited; 32 Maine, 431, (private railway on street, city not liable for damage done by it).

STREETS—HOW FAR TO BE IMPROVED.—City is not obliged to improve the *entire* length of a street or none; it may improve part and confine assessments to the lots adjoining the part improved. *Scoville v. Cleveland*, 1 Ohio St. R., 133; approved and applied 10 id., 159.

OWNERSHIP OF STREETS—USE OF BY R. R. CO.—In Davenport the *fee simple* of the streets is in the city, and lot owners do not own to the middle of the street in front of their lots; and City Council may grant use of street to railroad company and the lot owner along the

street cannot enjoin the railroad company or sue it or the city for damages. *Hughes v. M. & M. R. R. Co.*, 12 Iowa Rep., 261; *Milburn v. Cedar Rapids*, id., 246.

BRIDGES—DESTRUCTION OF.—City may sue for the value of one of its bridges illegally destroyed and converted to private use. 3 Fost. (N. H.), 83.

POWER OF CITY OVER BRIDGES—TOLL BRIDGES—BRIDGE FUND, &c.—City, without special power in charter, cannot build or assess others to build a *toll* bridge; but it may ordinarily do these acts with respect to a free bridge within the city limits. *Mullarkey v. Cedar Falls*, 18 Iowa R.; *Clark v. Des Moines*, 19 id.; *Barrett v. Brooks*, 19 id.

COUNTY BRIDGE FUND.—The city of Davenport is equitably entitled to its share of the *county bridge fund* levied upon all of the taxable property of the county, as well upon that *within* the city as without it. (*See case last cited for discussion of law on this point*).

As to liability for defective roads and bridges, see Section 9 of these notes and cases cited.

SEWERS.—Liability as to sewers for injuries by being out of repair, see 4 Allen, 41, 52.

INJURY BY CARS.—City not liable for injury caused by cars or telegraph posts on streets. 7 Gray, 421; 7 Gray, 386.

SECTION 7.—CITY ORDERS OR WARRANTS.

CITY WARRANTS NOT NEGOTIABLE PAPER; QUERE—CAN CITY ISSUE NEGOTIABLE PAPER?—Without express authority a city cannot issue warrants which have all the qualities of negotiable paper; but such warrants in whose hands soever they may be, are open to any defense the city may have. The assignee stands in the shoes of the payee. And if issued by the officers of the city without authority, or by the city for an illegal object, they are not binding upon the city. *Clark v. Des Moines*, 19 Iowa Rep., where this subject is fully considered, and see authorities there cited.

If the city of Davenport under the implied power given or recognized by Sec. 12 Art. 8 of its charter, has the power to issue negotiable paper it would require an express order of the Council.

CITY WARRANTS.—AUDITING ACCOUNTS.—A city has no right to issue warrants for a debt at the rate of one dollar in warrants for every seventy-five cents of debt—such warrants would be usurious. *Clark v. City of Des Moines*, 19 Iowa Rep.

How far the action of Council in ordering the issue of warrants for a greater sum than is due will bind the corporation, see the case last cited.

CITY WARRANTS.—PAYMENT.—When city orders are once paid they are absolutely extinguished : if again put into circulation by the Treasurer or other officer they are not binding upon the city, not even, it seems, in hands of innocent holders. *Chemung Bank v. Supervisors*, 5 Denio, 517; see 3 Comst., 430; *Clark v. Des Moines*, 19 Iowa Rep.

A city issued illegal scrip for a legal and just debt. It issued warrants to take up the illegal scrip. Held that the latter warrants were binding upon the city. *Clark v. City of Des Moines*, *supra*.

ORDERS—SPECIAL FUND.—When a claim on the fund named, and when a claim against the city, see *Clark v. Des Moines*, 19 Iowa Rep.; 4 Denio, 520; 23 Wend., 458; 12 id., 165.

SECTION 8.—ORDINANCES.

ORDINANCES—REQUISITES OF VALIDITY.—It is a general principle of law that all ordinances to be valid must be reasonable—must be consistent with the laws and public policy of the State, and must not be unequal, oppressive, or vexatious. Whether they are thus reasonable and valid is a question solely for the court. *People v. Throop*, 12 Wend., 183, 186; 5 Cow., 462, 465; 10 Ward, 100; 5 id., 166, 168; 14 id., 87; 3 Pick., 462:

6 id., 187; 1 Met., 130, 135; 16 Pick., 121, 125; 2 Cushing, 562, 575; 1 Green (N. J.), 196.

FORCE OF ORDINANCES.—When valid an ordinance is a law and has the same force as if passed by the legislature itself. 5 Cow., 538; 5 Abb. Pr. R., 422. But the power to declare invalid is to be “cautiously exercised” by the courts. 5 Cushing, 438, 442.

ORDINANCES—MOTION—RESOLUTION.—Where charter is silent as to mode, a determination of City Council may be by motion or resolution as well as by ordinance. 17 Ind., 175; see 15 id., 395; 13 B. Mon., 1.

ORDINANCES—SIGNING OF.—Signature of Mayor to ordinances not essential to their validity, unless this is *expressly* made an essential condition to their legality; otherwise the provision requiring him to sign them is directory. *Blanchard v. Bissell*, 11 Ohio St. Rep., 96.

ORDINANCES WHEN JUDICIALLY NOTICED.—Courts will not judicially notice *ordinances*; they should be set out in the record. *Garen v. Wells*, 8 Iowa Rep., 286. But may notice *charters* declared, like that of Davenport, to be public acts. *Durham v. Daniels*, 2 G. Greene R., 518. But ordinances may be noticed judicially by the Mayor or city courts. *Conboy v. Iowa City*, 2 Iowa Rep., 90; *State v. Leiber*, 11 id., 407.

ORDINANCES—NO EXTRA TERRITORIAL FORCE.—The ordinances of a city have no binding force beyond the city limits; but persons coming within the city limits come under the operation of its ordinances. *Gosselink v. Campbell*, 4 Iowa Rep., 296.

RESOLUTION—ORDINANCE DEFINED.—A *resolution* is a special or temporary order; an *ordinance* prescribes a permanent rule of conduct or government. *Blanchard v. Bissell*, 11 Ohio St. R., 96, 103, per SCOTT J.

ORDINANCES—PROSECUTIONS.—Prosecutions for violations of ordinances are in the nature of criminal, not civil, proceedings. 11 N. H., 106; 16 Pick., 504; 3 Pick., 462; 1 Green (N. J.), 196, 200.

LIABILITY.—City liable for negligence of its officers, agents and workmen in the process of executing a corporate work. 36 N. H., 295.

ORDINANCES—GENERAL POWER CONSTRUED.—What authority is conferred by the general power to pass “ordinances for the well being of the city.” 38 N. H., 426; 8 Fost., 175; 2 McMullen, (S. C.) 233; 33 N. H., 424; 1 Cush., (Mass.) 493; 3 Fairf., (Me.) 403, 408; 18 Ohio, 523; 37 Maine, 329; 42 Maine, 522.

This power does not give authority to pass ordinances contravening the provisions of the charter or the laws of the State. 33 N. H., 424, a valuable case.

“Huckster” defined. *Mays v. Cim.*, 1 Ohio St. R., 268, 272.

ORDINANCES—COUNCIL CANNOT DELEGATE ITS POWER.—The Council cannot delegate a discretion or power which its charter provides that it shall exercise. *Thompson v. Schermerhorn*, 6 N. Y. Rep., 92. But the Council may ascertain facts through the medium of a committee, and may, in certain cases, empower committee to act, as where it is directed to execute the will of the Council, or where the act to be done is not legislative or discretionary in its character. 24 How., 287, 296. Council may refer certain matters to a committee. 45 Maine, 241. Power of committees and power of Council over them. 2 Pick., 345.

ORDINANCES—MUST NOT CONFLICT WITH GENERAL LAW.—A city may consistently with general law, and when within the scope of its charter, further regulate by ordinance subjects already regulated by statute. *Huddleston v. Ruffin*, 6 Ohio St. Rep., 604, 606; *Rogers v. Jones*, 1 Wend. 237. But it cannot contravene the general policy of the State, and punish acts which the statutes of the State authorize. See on this general subject, *Canton v. Nist*, 9 Ohio St., 439 (Sunday law); *Thompson v. Mt. Vernon*, 11 id., 688 (liquor law); *Marietta v. Fearing*, 4 Ohio, 427 (stray animals); *Collins v. Hatch*, 18 id., 523 (cattle at large); see also 1

E. P. Smith, 297; 14 Barb., 425; 14 Ohio, 586; 9 Ohio, 520; 10 id., 192; 3 E. D. Smith, 156; 4 Hill, 209; 1 Wend., 287; (compare three last cases.) As to necessity of conformability of ordinances to general laws, and discussion of duplicate liability, one to the State and one to the city, see *Ambrose v. The State*, 6 Ind., 351; 2 Dougl., 322; 1 Bay, (S. C.) 382; 3 Penn., 253; 37 Maine, 329 (destruction of shade trees); see also, 1 Cush., 493; 10 Met., 382.

POWER—ORDINANCE—GAMBLING—DEFENSE TO ORDINANCES.—City without special authority cannot pass ordinance to punish gambling as a misdemeanor. *Mount Pleasant v. Breeze*, 11 Iowa R., 399. See *ante* p. 39. It is no defense to a prosecution for violating the ordinance of a *de facto* town or city to set up irregularities in the proceedings by which it was incorporated. *Decorah v. Gillis*, 10 Iowa R., 234; 1 Olio St. Rep., 126.

ORDINANCES—CLEARING OF SNOW.—City has power to require owner or occupant of building bordering on populous streets to clear the snow from the side-walks. Such an ordinance is reasonable and valid. *Goddard's case*, 16 Pick., 504; 14 Gray, 252 (as to respective liability of city and the lot owner for injuries from snow and ice on sidewalk.)

DOG ORDINANCE.—A loose, untied dog, though the owner be near by, but at such distance that such control over the animal could not be exercised as would prevent mischief, was decided to be “a dog *at large*.” 10 Met., 382; see 6 Cush., 248; 14 Gray, 52.

ORDINANCE—RESTRAINT OF TRADE.—City may prohibit any but *licensed* scavengers. This is not in restraint of trade. 6 Pick., 187; 2 Cush., 562, 576.

LICENSES.—The power conferred upon the city to require and exact licenses in certain cases is constitutional. 9 Pick., 415; see 2 Cush., 562.

ORDINANCES—POLICE POWER.—Ordinances under police power, as to shutting up saloons, &c. 4 Rh. I., 485; see also 12 Maine, 403; 16 Pick., 126.

ORDINANCES—RAPID DRIVING.—City may prohibit rapid driving in the streets. 3 Pick., 462; 2 Cush., 562, 570. *Ante* p. 40, city charter.

ORDINANCES—REMOVAL OF BUILDINGS.—City may pass ordinances regulating the removal of buildings and the temporary use of the street for that purpose. *Day v. Green*, 4 Cush., 433, 437, per SHAW, C. J.

CITY CEMETERIES.—Power of Council extends only to its *own* cemeteries, except, perhaps, to regulate depth of graves, &c., in other cemeteries. *Bogart v. Indianapolis*, 13 Ind., 134; law of burials, 4 Bradf. (N. Y.) R., 503; 5 Cush., 408.

City may prohibit interments within its limits. 16 Pick., 121; 7 Cow., 585; 5 Cush., 408.

CARS RUNNING IN CITY.—As to power to regulate the running of cars in city, see *R. R. Co. v. Buffalo*, 5 Hill N. Y., 209.

ORDINANCES—HOISTWAYS.—City may require hoistways *inside* of places of public resort as stores. 15 N. Y. Rep., 502.

SIDEWALKS.—A city may prohibit the appropriation of sidewalks to private uses. Hence may forbid sales by individuals at auction thereon. *White v. Kent*, 11 Ohio St. Rep., 550.

ARREST OF OFFENDERS.—A city may authorize arrests *upon view* for violation of ordinances, if this be not contrary to the general law or policy of the State. *White v. Kent*, 11 Ohio St. Rep., 550; 12 id., 127.

DE FACTO COUNCIL.—The ordinances of a *defacto* Council are valid. *Scoville v. Cleveland*, 1 Ohio St. R., 126; 10 Iowa, 234. *Ante* p. 61.

ORDINANCES—POWER OF CITY.—City cannot interfere specially to make that valid in a particular case which its ordinances make invalid. *Russ v. Mayor*, cited 4 Abb. N. Y. Dg., 161, Sec. 52.

ORDINANCES—REPEAL—VESTED RIGHTS.—Until private rights have vested, a city may decline to go on with

public improvements, and may repeal ordinances relating thereto. *State v. City Clerk, &c.*, 7 Ohio St. R., 355, (water-works case); 20 Wend., 618, 619, and cases cited; 1 Hill, 545; 18 Johns., 506. (See ordinance of city of Davenport as to repeal of ordinances granting special privileges).

PENALTY FOR VIOLATION OF ORDINANCES.—City cannot exceed, directly or *indirectly*, the limit fixed by the charter. 12 Johns. R., 122; 9 Wend., 571, 588, 606; 14 id., 87.

Where the specific punishment is fixed by the charter, that alone can be inflicted. 1 Term. R., 118, 124; 9 Wend., 571, 588, 606.

City cannot ordain *forfeiture* of property without express authority to do so. 9 Wend., 571; 10 Ohio, 32. *Ante* p. 40. And these two cases hold that ordinances authorizing the forfeiture and sale of property by the Marshal without notice and without opportunity of investigation, were void, being contrary to the genius of our laws and institutions.

ORDINANCES—VOID IN PART.—Ordinances may be void in part and good in part. 10 Met., 382; 16 Pick., 121, 126; 2 Cush., 562; 1 Gray, 1; 2 Gray, 84; 5 Gray, 482.

MARKET ORDINANCES.—10 Wend., 100; 5 Cow., 462; 8 Johns., 418; Hill & Denio's supp., 146; id., 241; 6 Duer, 315; 23 Pick., 71; 11 Pick., 168; 9 Met., 253.

Power to *establish* markets authorizes city to buy ground on which to erect a market building. *Ketchum v. Buffalo*, 14 N. Y., 356; 17 id., 449; 28 Barb., 65. *Ante* p. 39.

SECTION 9.—LIABILITIES OF CITY.

CITY NOT LIABLE FOR NON-ACTION.—City is not liable for not providing sufficient sewerage to drain the plaintiff's premises, or to carry away *surface water*; and such a case is to be distinguished from those where a private injury is caused by suffering a municipal work to remain out of repair, or where the municipal work is of itself a positive nuisance, or when it is done in a

careless manner. *Mills v. Brooklyn*, 32 N. Y. Rep., 489, and cases cited; 1 Denio, 595; 27 Barb., 218; 3 Duer, 406; 3 Hill, 612; 4 Ohio St. Rep., 80. See also *Flagg v. Worcester*, 13 Gray, 601. As to "surface water" see *Livingston v. McDonald*, 21 Iowa Rep.

LIABILITY FOR CARELESSNESS.—If a city leaves its gutters, culverts, and drains in a careless, unfinished, and negligent condition, so as to cause water to flow upon and injure private property it is liable for the damages thus occasioned. A city is liable in such cases on the same principles that private persons would be if they were doing similar work. And it is liable as above stated for the acts of its agents, officers, and servants in constructing public improvements, where these do not use ordinary care and prudence. *Wallace v. Muscatine*, 4 G. Greene R., 373 (back water); *Cotes & Patchen v. City of Davenport*, 9 Iowa Rep., 227 (grading case); *Freeland v. Muscatine*, 9 Iowa Rep., 461 (grading case); *Hanlon v. Keokuk*, 7 Iowa, 488; *Templin v. Iowa City*, 14 Iowa Rep., 60; *Rusch v. Davenport*, 6 Iowa Rep., 443. *Ante p. 75.*

LIABILITY FOR PUBLIC WORKS.—City is not liable when it uses due care in prosecuting an authorized public improvement or work. 13 Gray, 193; 6 id., 544; 7 Gray, 223; 13 Gray, 601, 605. But due care must be used, or city is liable. 6 Gray, 544; 13 Gray, 193, 605; 7 Gray, 122; 3 Duer, 406; 1 Denio, 595.

LIABILITY AS RESPECTS ITS OWN PROPERTY.—City cannot create a nuisance on its own lands, so as to injure others thereby. 3 Barb., 254; 3 Duer, 406.

In management of their lands or property, a city is liable for injuries caused thereby, same as natural persons. Id.; 36 N. H., 296; 3 Hill, 541; 19 Pick., 511; 10 Ohio, 159; 3 N. Y., 463; explained 18 N. Y., 161, 172; (see notes to charter, *ante p. 28*).

LIABILITY FOR UNSAFE PUBLIC BUILDINGS.—As to liability of city for injuries resulting from unsafe and

dangerous condition of the public buildings of the city, see *Commrs. v. Mighels*, 7 Ohio St. R., 109.

CITY NOT LIABLE FOR RIOTS OR WANT OF ORDINANCES, &c.—A city is not liable unless there is an express provision to that effect, (and in the charter of Davenport there is none) for losses sustained by individuals for the *riotous* destruction of property; and generally it may be stated for losses sustained from the want of proper ordinances, or from their inefficient enforcement.

Western College v. Cleveland, 12 Ohio St. R., 375, 379, and cases cited by GHOLSON, J.; 1 Sandf., 465; 11 N. Y., 396; 9 N. Y., 456, 459; 11 N. Y., 392; 12 Barb., 161.

LIABILITY—LICENSES.—City not liable for acts or misconduct of a auctioneer, tavern-keeper or other person carrying on a private business, though under a municipal license. 3 Pet., 398.

WHEN LIABLE IN TRESPASS.—Is the city liable for the trespasses of its servants and agents. The authorities do not agree; see *Harvey v. Rochester*, 35 Barb., 177; compare *Leman v. Mayor*, 5 Bosw., 414; *Howell v. Buffalo*, 15 N. Y., 512; 21 How. (U. S.), 202; 17 N. Y., 383, 386; 16 N. Y., 158, 161; 8 Barb., 645; 17 N. Y., 104; 11 N. Y., 392; 12 Barb., 161. See particularly, 1 Allen, 417; 4 id., 41, 52; 32 N. II., 435; 34 id., 306, 312; 7 Gray, 464; 19 Pick., 511; 4 Gray, 465.

When license fees and taxes illegally paid may be recovered back. *Baker v. Cin.*, 11 Ohio St. Rep., 534; 3 Watts, 327, 328; 4 Met. (Mass.), 181, 188; 5 Gillm., 513; 10 Pet., 150; 9 Cow., 674; 4 Gill (Md.), 425; 31 Pa. St. Rep., 73.

LIABILITY FOR DEFECTIVE BRIDGES AND STREETS.—In *Rusch v. City of Davenport*, (6 Iowa, 443,) the Supreme Court decided,

1. That the city was liable for an injury resulting from the defective condition of its bridges and streets. (The cause of the injury in this case was a defective bridge or crossing over a gutter).

2. That while the city might not be obliged to make a bridge or crossing for the whole width of the street, yet if it does so it is its duty to keep it in a suitable condition for crossing upon any and every part of it; and if it fails to do so, and an injury happens, the city is liable, if the person suffering the injury used due care to prevent it. See also *Hanlen v. Keokuk*, 7 Iowa Rep., 488.

As to liability of city for injuries caused by DEFECTIVE BRIDGES, SIDEWALKS, AND HIGHWAYS, see following leading cases:

Weightman v. Washington, 1 Black (U. S.), 39; 2 id., 590, 408; *Erie v. Swingle*, 22 Pa. R., 384; *Storrs v. Utica*, 17 N. Y. R., 104; 16 id., 159; *Browning v. Springfield*, 17 Ill., 143; 1 Seld., 369; *Wilson v. Mayor*, 1 Denio, 595; 5 Sandf., 289; *Smoot v. The Mayor*, 24 Ala., 112; *Dayton v. Pease*, 4 Ohio St. Rep., 80; 32 Barb., 634; 37 id., 292; 36 id., 226; 3 Cush., 174; 4 Cush., 277; 3 Hill, 612; 5 Seld., 168; id., 458; 6 Cush., 141; 3 Comst., 464; 11 N. Y., 393; 7 Gray, 421; 8 N. Y., 222; 11 N. Y., 432; 10 Cush., 260; 5 Ohio St., 38; 2 E. D. Smith, 254; 3 Cush., 121, (important case); 2 Hill, 77, (sidewalk); id., 461; 5 Duer, 674; 3 Comst., 463, (insufficient culvert); 9 N. Y., 163, (important case); 36 Barb., 226, (sidewalk); 32 id., 634, (sidewalk).

As to necessity of NOTICE to city of unsafe condition of streets, see 9 N. Y., 456; 5 Duer, 674; 35 N. H., 52; id., 74; 13 Pick., 94; 16 Pick., 541. Remedy over by city, see 7 N. Y., 493; 1 Seld., 48; 17 N. Y., 104; 5 Duer, 674; 4 Cush., 279; 14 Gray, 249; 11 Cush., 299; 2 Black (U. S.), 418, (leading case).

Owner of building liable for injuries sustained by DEFECTIVE GRATES, OPENINGS, &c., in sidewalks. *Congreve v. Smith*, 18 N. Y., 79; id., 84; 23 Wend., 446; 4 Cush., 277; 14 Gray, 249; 11 Cush., 299.

Width to be kept safe. 3 Cush., 176; 6 Iowa, 443; 6 Cush., 524.

City held liable for an injury done to a person by the
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fall of a projecting awning—13 Met., 292; but not for snow falling from projecting roof of a building. 13 Gray, 59.

SIDEWALKS—Injuries by snow and ice upon, 17 How. (U. S.), 161.

WHO LIABLE.—As to immediate and ultimate responsibility of railroad, canal, and turnpike company, and of city, with respect to bridges built within city, see 5 Ind., 286; *Barrett v. Brooks*, 20 Iowa Rep.; 23 Pick., 24; 4 Cush., 275; *Mullion v. Blackhawk Co.*, 21 Iowa R.

Author of nuisance on street is primarily and ultimately responsible. 12 Ind., 515; 10 id., 181, (obstruction by building materials); 32 N. H., 59, and cases; also 34 N. H., 179; 4 Cush., 275; 23 Pick., 24.

USE OF COUNTY JAIL BY CITY.—City liable to county for support of city's prisoners in county jail. 38 N. H., 21; 10 Fost., 299.

LIABILITY—PAUPERS.—The city of Davenport is not liable for the support of paupers—the charter not so providing. 12 Mass., 333; 14 id., 396; 28 Maine, 255.

POWER OF CITY RESPECTING HORSE RAILWAYS.—On the 7th day of July, 1866, at a meeting of the citizens of Davenport, held with reference to the above subject, Judge DILLON, chairman, appointed a committee of legal gentlemen impartially to examine the matter in its legal bearings. The following report is believed correctly to state the law on this subject, and is here inserted in order that it may be preserved for the information of the Council when they shall come to act, (as before long they will doubtless be called upon to do), upon the subject or horse railways.

REPORT OF COMMITTEE.

At a meeting of citizens of the city of Davenport, held on Saturday evening last, (July 7th), the undersigned were appointed a committee to examine and report upon the question whether the City Council has

the legal power to grant to a company, organized for that purpose, the right to construct and operate through the streets of the city a horse or street railway.

We assume that any company or association proposing to engage in the enterprise in question, would incorporate itself under the general law of the State, in the same manner as other railway companies, (the Mississippi and Missouri for example,) have done, and would thereby acquire all the rights and powers conferred by law upon railway corporations in general. Upon this assumption, we are of opinion that the question whether the City Council has power to grant permission to such corporation to lay its tracks and run its cars through a street of the city, is settled in the affirmative, by the decisions of the Supreme Court of this State in the cases of *Milburne v. The City of Cedar Rapids, et al.*, and *Hughs v. M & M.R. R. Co., et al.* reported in 12th vol. of Iowa Reports, pages 246, 261. This last named case is particularly in point, as it originated in this city, and relates to rights which may be conferred on a railroad company in the streets. In these cases it was held by the Court :

1. That the title, or fee simple, in the streets of the city is vested in the city corporation and not in the owners of lots fronting on the street, subject only to the public use for a street, and that hence such owners can not complain of a laying of a railroad through the street, as an appropriation of their property to public use, without compensation.

2. That the Legislature has conferred upon railroad companies (by the 8th and 9th sections of "an act granting to railroad companies the right of way;" laws of 1858, p. 53) the right to construct their roads over and upon the streets of cities, the consent of the City Council being first obtained ; and railroads constructed upon streets, under such authority, cannot be considered as public nuisances.

It is true that these decisions were not made directly with reference to horse or city railroads. But we are

of opinion that, so far as the present question is concerned, no distinction *unfavorable* to such roads can be taken between them, and railroads of a different kind, connecting distant places and operated by steam. If any difference exists, the right of the Council to authorize the construction of a city or horse railroad through the city streets, would seem to be clearer than their power to confer the same privileges on a railroad of the other class, inasmuch as the former is intended and used for purposes strictly municipal, and interferes much less with the ordinary use of the streets by vehicles and passengers.

It will be observed that by the decisions referred to the power which the railroad company acquires to construct its road over the street, is derived, not from the City Council, but from the State Legislature. The *assent* of the Council is, it is true, required as a condition; but the power to use the street for the purposes of the railroad, is not given or created by that assent, but by the legislative act. It follows, we think, that the assent being once given and the company having acted on it and constructed their road, it could not be revoked except in pursuance of terms and conditions imposed by the Council at the time of granting it. The right of the company would then rest upon the same foundation as though it had been directly granted by the legislature without requiring any assent by the Council.

We have not overlooked the decisions of the New York Court of Appeals in the well known "Broadway Railroad case," (*Davis v. The Mayor, &c.*, 14 New York, 506; *Milhan v. Sharp*, 27 N. Y., 611,) in which it was held that the corporate authorities of New York City have no power to grant to private individuals an exclusive, irrevocable and perpetual right to construct and operate a railroad in the streets of the city for their own profit. We have given these cases a careful examination and are of opinion that the decisions therein are inapplicable to the case we are now considering, for

the reason that the association of individuals to whom the grant was then made, was a mere private partnership, having no corporate rights or powers whatever, and that the validity of the grant depended wholly on the action of the Common Council of the city, having no vestige of legislative support. Under these circumstances it was held that the city could not, without authority from the legislature, thus abdicate in favor of private persons their control and authority over the streets. But there was no intimation in the opinions of the court, that the legislature could not confer the powers which it was held the city government could not, unaided, grant. On the other hand, it was held by the same court, in *The People v. Kerr*, 27 N. Y., 188, that the legislature could authorize a railroad corporation to construct its roads through the streets of New York City without the consent of the city authorities, and without compensation either to the city or the owners of lots on the streets ; the title to the streets being in the city in trust for the public. As above shown in the case referred to us, the power will be derived from the legislature and not from the city.

All of which is respectfully submitted.

JNO. N. ROGERS,
GEO. P. WHITCOMB, } Com.
A. H. BENNETT,

July 11th, 1866.

RESERVED LANDING.—The following are from the city records :

“ COUNCIL CHAMBER, June, 1846.

Council convened agreeably to a call from the Mayor, for the purpose of giving or granting the right of said corporation to a certain piece of ground within the limits of said town, on the Mississippi River.

Present—Thorington, Mayor; Aldermen Whiting, Miller, Morton, Alvord, McCloskey.

The Clerk of the corporation being absent, on motion, W. P. Campbell was chosen Clerk *pro tem.* Thereupon

the following was presented and unanimously passed,
to-wit :

WHEREAS, Antoine Le Claire, at the time of the laying out into town lots of his second addition to the town of Davenport, as recorded in the Recorder's office of the county of Scott, left out two certain lots of ground on the south side of Front street, in front of blocks number sixty-one and sixty-two, in said town, marked on the plat of said town, "Reserved Landing; and whereas, Ambrose C. Fulton, of said town, by the consent of said Le Claire, proposes to erect upon a portion of one of said lots a steam mill; and whereas, also, some doubts have been expressed as to the rights of said Le Claire and the corporation of the town of Davenport in and to said lots; and now, therefore, for the purpose of removing all doubts upon the subject,

Be it ordained by the Mayor and Aldermen of the town of Davenport, That in consideration of the premises, and that the said Fulton erect a mill thereon, as at present contemplated, all right, title, interest, and claim of the said corporation in and to the following described portion of the said tract of land, to-wit; beginning at the south-east corner of said tract, in front of block sixty-one, at the corner of Front and Perry streets, in said town; thence west on Front street one hundred and twenty-eight feet; thence south to the Mississippi River at low water mark; thence eastwardly along the bank of said Mississippi River to Perry street; thence north to the place of beginning, be and the same is hereby released and discharged to the said Antoine Le Claire, and also all right and claim that the said corporation may have to control the property, or the use of any part thereof, further than the rights that said corporation have over other private property within the limits of said corporation.

On motion, Council adjourned.

Attest : JAMES THORINGTON, Mayor.

W. P. CAMPBELL, Clerk *pro tem.*"

"COUNCIL CHAMBER, June 25, 1847.

Council met. Present—James M. Bowling, Mayor.

A petition, signed by eighty-five citizens of the town, was presented by J. L. Davies, praying a discharge by said town, to A. C. Fulton, of all the right of said town to a certain portion of the "Reserved Landing" in the same, and on motion of D. C. Eldridge the following was presented and unanimously adopted:

WHEREAS, Antoine Le Claire, at the time of laying out into town lots of his second addition to the town of Davenport, as recorded in the Recorder's office, in the county of Scott, left two certain lots of ground on the south side of Front street, in front of blocks number sixty-one (61) and sixty-two marked on the plat or map of said town "Reserved Landing;" And whereas, Ambrose C. Fulton, of said town, proposes to erect upon one of said lots a steam mill; And whereas, also, some doubts have been expressed as to the rights of said corporation and Antoine Le Claire in or to the lots, or some certain interest in, or use thereof; now, therefore, to remove all doubts upon the subject, as the said Fulton holds a bond from the said Le Claire for the conveyance to said Fulton of all his right to said piece of ground.

Be it ordained and resolved by the Mayor and Aldermen of the town of Davenport, That in consideration of the premises, and that the said Fulton shall build and erect a mill thereon, agreeably to the conditions of the bond entered into between said Le Claire and Fulton, all right, title, interest and claim of the said corporation in and to the following described portion of the said tracts of land, to-wit :

Beginning on Front street, eighty (80) feet south of the south-east corner of block number sixty-one (61); thence east on and along the south side of Front street one hundred and ninety-two (192) feet to the property conveyed to Burrows & Prettyman by said Fulton; thence south to the Mississippi River at low water

mark ; thence westwardly on and along the bank of said river at low water mark to a point due south of the place of beginning, and to the east line of Brady street ; thence north on and along the east side of Brady street to the place of beginning, being all that portion of land marked " Reserved Landing " on the recorded map or plat of said town of Davenport, lying in front of lots number one (1), two (2), and three (3), in block number sixty-one (61), be and the same is hereby released and discharged to the said Ambrose C. Fulton ; and also, all right and claim that the said corporation may have in the same, or be entitled to, or any right it may have to control the said property, or the use thereof, or any part thereof, further than the right said corporation may have over other private property within the limits of said corporation.

JAMES M. BOWLING, Mayor.

JAMES THORINGTON, Clerk."

SEAL OF CITY.—The early seals of the city are shown by the following extracts from city records :

May 4, 1839.—" *Resolved*, That the temporary seal of the said Council (of the town of Davenport) be an American eagle of a twenty-five cent piece."

Nov. 30, 1839.—The temporary seal was changed "to an American eagle of a ten cent piece."

June 29, 1844.—Seal changed to half dollar American coin, having on it the goddess of liberty.

ORDINANCES OF THE CITY OF DAVENPORT.

State of Iowa, City of Davenport, }
Year One Thousand Eight Hundred and Sixty-six. }

AN ACT for Revising and Consolidating the Ordinances of the City of Davenport.

WHEREAS, It is expedient that the ordinances of the *Preamble*. city be revised, consolidated, and properly arranged; therefore

Be it enacted by the City Council of the city of Davenport, as follows:

CHAPTER I.

Extension of the Corporation Limits.

SECTION 1. That Antoine Le Claire's Second Addition be, and the same is hereby annexed to the original town of Davenport, and that it shall hereafter form a portion of the same.

Passed and approved November 30th, 1839.

[NOTE.—This addition, as well as other additions, are also embraced in the chartered limits of the city. See city charter, Art. 1, Sec. 2. *Ante p. 26.*]

CHAPTER II.

AN ORDINANCE to prohibit Auctions and Sales of Fruit, etc., on the streets.

SECTION 1. No person shall hold a public auction in <sup>Auction for-
bidden,</sup>

Sales of fruit.

the streets of the city of Davenport, without a special written permit from the Mayor.

SEC. 2. No person shall be permitted to hold regular sales of apples, or other fruit, or any article of merchandize, at any corner of, or at any place on the public streets or highways, so as in any manner to incommodate the citizens of said city, or any traveller passing along said streets.

Penalty.

SEC. 3. Any person violating any provision of this ordinance shall, upon conviction thereof, pay a fine of not less than five dollars nor more than fifty dollars for each offense.

Passed and approved December 27, 1854.

[NOTE.—Such ordinances as this are valid. *Ante* p. 85.]

CHAPTER III.

AN ORDINANCE declaring Alleys to be Public Highways.

Alleys and lanes.

SECTION 1. All alleys or lanes that have been, or may hereafter be laid out in any part of said city for the purpose of accommodating persons other than the owner of the land on which they are or may be laid, are hereby declared public highways.

Passed and approved November 8, 1854.

CHAPTER IV.

ARTICLE 1.

*AN ORDINANCE for Raising Revenue.**

Assessment.

SECTION 1. It shall be the duty of the City Assessor on the second Monday of April in each year, to take an

* City Assessor made Deputy Collector. See Chap. 13, Art. 2.

assessment of all the real and personal property within said city, which is subject to taxation for county purposes, and shall make out and return to the Clerk of said city, an assessment list of all such property by the first day of June in each year.

SEC. 2. At the first meeting of the City Council ^{Levy of tax.} after said return, and after said assessment roll shall have been corrected and equalized according to law, the City Council shall levy a tax for ordinary purposes not to exceed five mills on the dollar of the real and per-^{Rate.} personal property subject to taxation in said city; and further for road purposes, to levy a tax not to exceed three mills on the dollar on all property liable to road tax within said city.

SEC. 3. The tax so levied shall be a lien upon the ^{Lien.} real estate upon which it is levied from and after the first day of March, and persons purchasing are bound to take notice thereof.

SEC. 4. The Marshal of said city shall have power, ^{Omitted prop-}_{erty.} and it is hereby made his duty, to place upon the assessment roll all real and personal property which has been omitted by the Assessor, and levy and collect the tax thereon in the same manner and with the same effect as if the same had been listed by the City Assessor.*

SEC. 5. It shall be the duty of the Clerk of said ^{Assessment list}_{and warrant.} city, immediately after receiving the assessment list, as hereinbefore provided, to make out and deliver to the Marshal of said city, a duplicate of said assessment, together with a warrant for the collection of the taxes so assessed, which shall be signed by the Mayor and Clerk, and sealed with the common seal of said city.

SEC. 6. The real estate subject to taxation in said ^{Listing.} city, which is not listed by the owner or agent, shall be listed and assessed as unknown.

SEC. 7. The poll tax of this city shall be worked ^{Poll road tax.}

*This provision is modified by Section 10 of Article 2 of this Chapter, which, being the latest ordinance, governs.

out under the direction of the Street Commissioner in such manner as the City Council may from time to time provide.

Passed and approved, April 18, 1855.

ARTICLE 2.

*AN ORDINANCE providing for the collection of the
City Revenue.*

Collector's oath
and bond. SEC. 1. Before entering on the duties of his office, the Collector shall take the oath of office required by law, and execute and deliver to the City Clerk a bond with two or more sureties, to be approved by the City Council, in a penalty to be prescribed by the City Council. Said bond shall be filed in the City Treasurer's office.*

What to collect. SEC. 2. The Collector of the City of Davenport shall collect and receive the entire city revenue from all sources, viz : the ordinary and any specific taxes, levied annually by the City Council, the proceeds from rents and leases of public grounds and public buildings (except the proceeds from the sale of lots in the public cemetery), from market stalls or from any other premises or out of any other sources from which revenue may be derived—and he shall collect the same in such a manner as prescribed in this ordinance.†

Same. SEC. 3. The Collector shall collect and receive all moneys belonging to the city in the possession of the Mayor, the Police Magistrate, the City Clerk, and all other officers of the city, except the City Treasurer, every Saturday, and give a receipt to each respectively therefor, and it shall be the duty of all the officers named in this section, to pay over said money to the Collector as aforesaid, and take said receipt in a receipt book, to be provided by each for himself, and to be delivered over

*Clerk's duty with respect to bond, see Chap. 13, Art. 3.

†See later ordinance, Chap. 13, Art. 3.

to the City Council at the expiration of their several terms of office, for the use of the city.

SEC. 4. The City Clerk shall on the first regular meeting of the City Council in December of each year, make out and report to the City Council a list of all persons to whom public grounds, public buildings, market stalls, or any other premises, rights or purchases belonging to or under the control of the city, are rented or leased, properly describing the same, together with the amount of money due the city from said premises, the name of the person or persons from whom due, the time when due for collection, and the time at which the contracts expire, each respectively. Said list shall be handed over to the Collector on the first meeting of the City Council in January of each year, and he shall proceed forthwith to collect the amounts specified in the said list as the same become due, give receipts for the payment thereof, and deposit the money in the City Treasury, and report to the City Council thereon, as provided in section number eight (8) of this ordinance.

SEC. 5. The Collector and all officers named in section number three (3) of this ordinance shall report to and settle through the Finance Committee with the City Council at their first meeting in each month, and the Collector's receipts from the Treasurer and the receipts of the other officers named in section number three (3) of this ordinance from the Collector, shall be received by the Council in said settlement as evidence of the amount paid by them respectively.*

SEC. 6. The City Treasurer shall receive no money belonging to the city from any officer, except from the Collector and except as is provided by ordinance to be paid to him, and except the money on the redemption of property sold for delinquent taxes as provided in

* As to duty of city officers in making settlements, &c., see ordinance March 1, 1865, (Chap. 13, Art. 3).

This last named ordinance (Chap. 13, Art. 3) is the one which specially governs the mode of collecting the revenues and keeping the accounts of the city.

section twenty-four of this ordinance. The Treasurer shall keep an accurate account, item by item, of all the money received and paid out by him, in a book to be kept by him expressly for that purpose, and report at the first Council meeting in each month the state of the treasury and the liabilities of the city, and at the expiration of his term of office he shall settle with the City Council and deliver over all books and papers connected with city business and his office as Treasurer to the City Council.

What books
kept.

SEC. 7. All the officers named in section number three (3) of this ordinance, together with the Collector, shall keep a book, each for himself, in which they shall enter daily, item by item, amounts of all moneys received and paid out, which book, together with the Treasurer's book, shall be open for inspection at any reasonable time by any person who may desire it, and shall be delivered to the City Council at the final settlement with said officers, for the use of the city.

Collector when
to pay over.

SEC. 8. The Collector shall pay into the City Treasury all moneys collected by him as fast as collected, and at least as often as every Monday, in the like funds collected by him. He shall report the amount of such collections at the ensuing meeting of the City Council after making such deposit, with the Treasurer's receipts. All moneys deposited by the Collector shall be credited to him by the Treasurer.

How to collect
taxes.

SEC. 9. The Collector, on the receipt of the duly executed tax warrant, shall forthwith proceed to collect the taxes therein charged, and complete the collection of the same as far as he can, and settle with the City Council by the first day of October in each year. The Collector shall make personal demand of every resident charged with tax, if he be found within the city, or leave a written notice of the amount of tax at his or her place of abode, and he shall publish in the official newspaper of the city, and put up at least one written notice in each ward of the city for ten (10) days, that if

Demand and
notice.

the taxes are not paid within twenty (20) days from and after the first publication of said notice, the same will be collected by sale of property of delinquents.

SEC. 10. It shall be the duty of the Collector and Assessor to assess any real or personal property subject to taxation, which may have been omitted by the Assessor in the assessment roll. The Collector and Assessor shall report every such subsequent assessment to the City Council, on their first meeting after such an assessment is made, together with the proper description of the property, the owner's name, when known, and the assessed value thereof. The City Council shall, by resolution, order the City Clerk to enter every such assessment in writing in the Collector's warrant. He shall carry out the amount of each different tax respectively, and note opposite the lot or tract of land or personal property so entered, the words "subsequent assessment;" and the Collector shall then proceed to collect the taxes thereon, in the same manner as provided in this ordinance for the collection of taxes on the original warrant. If the Marshal or Collector has reason to fear that property omitted to be assessed will be removed from the city before the next meeting of the Council, he may cause the Assessor to assess the same and collect the tax in the usual manner, without reporting to the City Council as above provided.

SEC. 11. The Collector, Assessor, and City Clerk, and all other officers of the city, shall report to the City Council any error in the assessment, valuation or description of property, or in the corresponding amount of taxes, which may be found by them, or either of them, and no correction of any such error shall be made in the Collector's warrant, unless by order of the City Council, instructing the City Clerk, by resolution or otherwise, to make and enter such correction in the Collector's warrant, adding thereto the words, "corrected by order of the City Council."

SEC. 12. After the expiration of the said twenty (20)

Distress and
sale.

days, the Collector shall proceed to the collection of taxes remaining unpaid, by distress and sale of personal property of such delinquent or delinquents. The Collector shall have power, by virtue of said warrant, as constables on execution, to distrain and sell the personal goods and chattels of any person chargeable with any real or personal tax, who shall neglect to pay the same for the period of twenty (20) days after the publication of notice as aforesaid.

Same.

SEC. 13. When the Collector distrains goods, he may keep them at the expense of the owner, and previous to any sale by the Collector of any goods or chattels distrained by him, he shall give notice of the time and place of their sale within five (5) days after the taking, together with a description of the goods and chattels to be sold and the amount of taxes and costs for which the sale may be made, and in such manner as constables are required to give notice of the sale of personal property under execution. The time of sale shall not be more than twenty (20) days from the day of the taking. The sale shall be at public auction, and no more property (if practicable) shall be sold than will be sufficient to pay the taxes, the charges of keeping, costs, and fees for sale. Any surplus arising from the sale shall be paid to the owner of such property, and the Collector shall give to the purchaser thereof a certificate, stating the description of the property purchased, the price paid therefor, and the day of sale. For such levy and sale the Collector shall be entitled to the fees allowed by law to constables for like services.

Payment of tax. SEC. 14. Whenever any tax shall be paid to the Collector, he shall mark the word "Paid," together with the name of the person making such payment, and the date when paid, on the face of the warrant, opposite the real or personal property charged therewith, and he shall deliver to the tax-payer a receipt for such taxes paid, stating the time of payment, the description of the land or property, the amount of each kind of taxes and
Receipt.

costs, if any, giving a separate receipt for each year, and shall also retain a duplicate of such receipt. The Collector shall, on the same day on which he makes his deposits with the City Treasurer, deliver all such duplicate receipts for taxes collected by him to the City Clerk, who shall file the same in his office.

SEC. 15. The City Council may, from time to time, ^{Return of warrant.} extend the return day of any tax warrant, by order or resolution. On the return day, it shall be the duty of the Collector to make return thereof to the City Council, which return may be in the following form :

RETURN OF WARRANT.

STATE OF IOWA, CITY OF DAVENPORT, {
City Collector's Office, — —, 18—. }

The undersigned, Collector of the city of Davenport, ^{Form of} makes return to the City Council of the within and foregoing warrant, that he has collected the taxes on all the real and personal property described in said warrant opposite to which the word "paid" is written; that a demand of payment has been made on the several other taxes not marked paid, of the persons mentioned in said warrant as liable to the payment thereof, and that he has not been able to find any personal property belonging to them, or either of them, subject to the payment thereof; he therefore returns the said warrant unsatisfied as to all taxes not marked "paid" on the face of the warrant. — — —, City Collector.

SEC. 16. On the return of any warrant unsatisfied, ^{Order for sale of real estate.} in whole or in part, as to any taxes on real estate, an order shall be made by the City Council for the sale of the real estate on which the taxes remain unpaid. A certified copy of such order, signed by the Mayor and Clerk under the corporate seal, shall be written upon or otherwise attached to the Collector's warrant, and delivered by the City Clerk to the Collector within a reasonable time after such order shall be made, which order, with said warrant, shall constitute the process

upon which the Collector shall sell the real estate described therein.

Publication.

SEC. 17. The Collector shall thereupon advertise the said real estate for sale in the official newspaper or newspapers of the city for six (6) consecutive weeks, and said notice shall contain the name of the owner, when known, the amount of taxes, costs and printer's fee, and the number of the lot, or description of the piece of land on which the same are due, and also the time and place of sale, unless payment be made of the taxes, costs and printer's fee on or before the day of sale. The time fixed for selling shall not be later than the first day of February in any year, without a special order of the City Council.

Same.

SEC. 18. In all advertisements for the sale of the real property for taxes in description and entries required to be made by the Collector, Assessor, City Clerk, City Treasurer, or any other officer, letters and figures may be used as they have been heretofore, to denote townships, ranges, sections, parts of sections, lots, blocks, dates, and the amount of taxes, costs and fees; and no irregularity or informality in the advertisement shall effect in any manner the legality of the sale, or the title to any real property conveyed by the Mayor of the city under the city charter and the provisions of this ordinance.

Mode of sale.

SEC. 19. The Collector shall attend at the time and place of sale of the real estate mentioned in said notice, and then and there offer each lot or piece of land so advertised for sale, on which the taxes shall not have been paid previously thereto; and if the Collector shall fail to be present at the time and place aforesaid, he shall be liable to a fine of not less than one hundred (100) dollars, nor more than (1,000) dollars, to be recovered by suit on his official bond. The sale shall be made for the least quantity of the lot or piece of land for which any person will pay the taxes, costs and printer's fees thereon, or the whole, if no bid for a less quantity is offered.

The Collector shall, in offering the least quantity of a lot or piece of land when such portion constitutes a half or more of the parcel, take the same from the east side thereof, dividing it lengthwise by a line parallel with the proper line of the lots. The purchaser shall forthwith pay to the Collector the amount due; and in case of failure to do so, the lot or parcel of land shall be again offered for sale. The Collector shall continue the sale from day to day, as long as there are bidders or until the taxes are paid.

SEC. 20. Every purchaser at such sale shall be entitled to a deed, signed by the Mayor, and which shall contain the name of the purchaser, a description of the number of lot, or the portion thereof, or the piece of land, to him sold, the amount of taxes and the year for which they became delinquent, and the costs and printer's fees for which the same was sold. The Collector is entitled to the same fees allowed County Collectors for the same services. And this deed so made by the Mayor shall have the same effect as the County Treasurer's deed under sales made by him, as provided by Art. 2 of Chap. 51 of the Revision of 1860, being Sec. 1144 of said Revision, which is hereby referred to and incorporated herein; and the holder of said deed shall have all the rights given and conferred by the said section of the Revision and the charter and ordinances of the city.

SEC. 21. It shall be the duty of the Collector to keep an accurate record of the sales of real estate made by him in pursuance hereof, and make return of such sales, together with said warrant and order of sale, on or before the first day of March in each year. The Collector shall procure and file with said return a copy of the notice of sale, with certificates of the publisher or publishers of the official newspaper or newspapers of the city, that the same was published in said paper or papers for at least six (6) consecutive weeks prior to the day of sale, that the first publication was made on the —— day of ——, 18—, and the last on the —— day of ——, 18—.

Same by Clerk. SEC. 22. On the return of said sales, the City Clerk shall make a record thereof in a book to be kept by him for that purpose, therein describing the several parcels of real property on which the taxes, costs and printer's fee were paid by the purchaser, as they are described in the list of advertisements on file in his office, stating in separate columns the amount, as obtained from the Collector's warrant and tax list, of each kind of tax, costs and printer's fee, for each tract of lot or land, how much and what part of each tract of lot or land was sold, to whom sold, and date of sale.

Redemption. SEC. 23. Real property sold under this ordinance may be redeemed by the owner or any person interested, at any time before the right of the tax purchaser shall become absolute, by paying the amount for which the same was sold, with 25 per cent. interest per annum on such amount, to the City Treasurer to be by him held subject to the order of the purchaser.

Certificate of redemption. SEC. 24. The City Clerk shall, upon application of any party to redeem any real property sold under the provisions of this ordinance, and being satisfied that such party has a right to redeem the same, issue to such party a certificate of redemption, setting forth the facts of the sale substantially as contained in the deed, the date of redemption, the amount to be paid, and by whom redeemed; and he shall make the proper entries thereof in the book wherein tax sales are recorded, and shall immediately give notice of such redemption to the City Treasurer. For every redemption the City Clerk shall be entitled to a fee of fifty (50) cents, to be paid by the party making the same. Such certificate of redemption shall then be presented to the Treasurer, who shall receive the amount due as specified in such certificate, and countersign the same, and make the proper entries in his books; and no certificate of redemption shall be held as evidence of such redemption, without such signature of the Treasurer. The Treasurer shall keep an account

of all the redemption moneys, and report the same in his monthly statement to the City Council.

SEC. 25. [As to prior sales, the Council on the 14th day of March, 1866, passed the following]: "If the Treasurer is not able, by reason of no tax sale book being extant for sales for taxes, by which he is enabled from record to countersign certificates of sale, if such is testified by the Treasurer, then the Mayor of the city shall, on demand of the *bona fide* holder, and on the presentation of such certificate, regular on its face, and presented after two years from day of sale, make, execute and deliver to the holder or owner of such certificate a deed for said property, in said certificate described."

SEC. 26. The Collector shall make a final settlement of the taxes and any other moneys collected or received by him, according to the provisions of this ordinance, with a special committee appointed by the City Council for that purpose, as soon after the last regular meeting of the City Council in March, in each year, as said committee or City Council may require. In such settlement, the Collector shall be charged with the whole amount of the real and personal tax placed in his hands for collection, but shall be entitled to a credit for such part of the taxes on personal estate to be specified in a list prepared by the Collector, as the committee or City Council shall be satisfied (from the affidavit of the Collector and other evidence,) are wholly uncollectable and could not have been collected.

SEC. 27. If any officer, upon whom any duty is imposed by this ordinance, shall neglect or refuse to perform the same, or shall be guilty of any malfeasance or misfeasance in the performance thereof, he shall be subject to removal from office, and shall pay a fine of fifty (50) dollars in each case, to be recovered in a suit by the city against such officer on his bond.

SEC. 28. No list, warrant, order, notice, process or proceeding required by this ordinance shall be deemed defective by reason of any clerical error, or any informalities

Penalty for
official neglect.

cured.

mality ; but any such list, warrant, order, notice, process or proceeding shall be deemed sufficient which shall substantially conform to the requirements of this ordinance.

SEC. 29. All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

Passed and approved July 18, 1860. Amended to read as above printed Sept. 12, 1866.

ARTICLE 3.

AN ORDINANCE to provide for the cancellation of City Tax Sale certificates in certain cases.

SEC. 30. (1.) *Be it enacted by the City Council of the city of Davenport,* That such owners of real estate in said city, who hold certificates of sale for delinquent city taxes, either issued to them or duly assigned to them, on which the time for redemption has expired, may procure a cancellation of the same by delivering such certificates to the Clerk, who thereupon, and upon receipt of twenty-five (25) cents fee for each certificate so to be cancelled, shall endorse upon such certificate the words, "cancelled by request of the holder of the certificate;" and shall file the same in his office, and shall make a like entry opposite to the entry of sale on the city sale records in his possession and on the city sale books in the possession of the City Marshal.

SEC. 31. (2.) All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Passed and approved July 6, A. D. 1864.*

*NOTE.—This chapter in relation to Revenue has been made to conform to the provisions of the State law, passed March 22, 1858, entitled "An Act concerning Taxes levied by Municipal Authorities." Rev. of 1860, Sec. 1144. By this the purchaser is entitled at once to a deed; whether his title becomes absolute if not redeemed in three years as under existing State law, or whether he must foreclose as under the Code before getting an irredeemable title, the ordinance does not determine. See on this subject notes to charter, *ante*, pp. 34, 37, and the following cases recently decided by the Supreme Court:

Street v. Hughes. 1. *Tax deed—by Municipal authority.* There is nothing in Chap. 1 05, Laws of the Seventh General Assembly (Rev. 1860, Sec. 1144) defining

CHAPTER V.

AN ORDINANCE for the extension of Brady street.

SEC. 1. Brady street is extended from its present termination along the line dividing out-lots No. 9, 10, 11, 12, 13, 14, 15, 16, on the west, from out-lots No. 17, 18, 19, 20, 21, 23, 24, on the east, to the line bounding out-lots No. 9 and 24 on the north. Brady street extended.

SEC. 2. Said extension shall be forty feet in width, width. extending twenty feet east and west from the division line aforesaid.

Passed and approved, 1841.

CHAPTER VI.

AN ORDINANCE to prevent bathing in front of Davenport.

SEC. 1. No person shall be allowed to go into the river to bathe, in front of the city of Davenport, after one-half hour before sun-rise, and until half an hour after sun-set. Bathing forbidden.

SEC. 2. Any person violating the provisions of this Penalty.

who shall make tax deeds under sales for municipal taxes, but this matter is left to the provisions of the several charters.

2. —— *statute construed.* The object of said statute was to give a uniform effect to the deeds made to purchasers at sales for municipal taxes, and a like method for the foreclosure of the equity of redemption.

Burke v. Jeffries, et. al. 1. *Municipal corporation—revenue.* There is no provision in the "Act for the incorporation of cities and towns," approved March 23d, 1858, for the levy and collection of taxes, and for sales for delinquent taxes in cities incorporated under a special law.

2. *Repeal—by implication.*—Repeals by implication are not favored by the courts.

3. *Municipal Corporation—statute construed.*—Section 1123, Revision of 1860, applies only to the towns and cities organized under the general act, and to those which should adopt it, and not to those owing their chartered existence to special acts.

4. —— *cases doubted.*—The case of *Whiting v. Mt. Pleasant*, 11 Iowa, 482 doubted.

ordinance shall, upon conviction thereof, pay a fine of five dollars for each offence.

Passed and approved June 24, 1843.

CHAPTER VII.

AN ORDINANCE for the relief of Burrows & Prettyman.

Bulkhead in
river.

SEC. 1. Messrs. Burrows & Prettyman, their heirs or assigns, are authorized and empowered to erect a bulk-head, artificial bank, or grade, to the east of their mill on the bank of the Mississippi river, in such a manner as to prevent injury to their property by ice.

Provided, however, that said bulk-head does not extend further up the river than forty feet, nor further into the river than any improvements already erected, and

Provided, further, that they pay all damage to individual rights, resulting from such improvements.

Right to repeal SEC. 2. The city reserves to itself the right of repealing this ordinance whenever, in their opinion, the public good shall require it.

Passed and approved May 18, 1849.

[NOTE.—This ordinance is repealed. See chapter 84, *post.*]

CHAPTER VIII.

AN ORDINANCE for the relief of Strong Burnell.

Right to use
part of landing
and river.

SEC. 1. Strong Burnell is authorized to use the public lands in front of block No. 5, in the city of Davenport, (except a street eighty feet in width, on the north side of the said public lands; and excepting also, a street forty feet in width in front of the west side of the lot occupied by Mrs. Dillon,) for the purpose of

storing logs and lumber, and hauling the same to and from the river, and also, the right to use the landing in front of said block, for landing logs, rafting lumber, and other uses connected with said mill, for a term of twenty years, and the right to moor logs and lumber, and leave them in the water the length of the block below said block 5, until some application shall be made and granted for the use of said landing.

Provided, however, that said Burnell, his heirs or ^{Payment for.} assigns, shall build and put into operation said mill within one year from this date, and shall annually pay into the treasury of the town the sum of one dollar.

Passed and approved September 10, 1849.

CHAPTER IX.

AN ORDINANCE relating to auctioneers.

SEC. 1. No person shall carry on the business of an auctioneer, or sell, or hire, or offer for sale or hire, for ^{License necessary. See ante pp. 55, 88.} any person, at auction, any real or personal property within the limits of the city of Davenport, without obtaining an auction license. Any person wishing to obtain an auction license shall first pay into the city treasury the sum of fifty (50) dollars, and upon producing a certificate from the Treasurer of the city of said payment, the City Clerk shall issue an auction license, and shall receive therefor one dollar fee. No license to be granted for less than fifty dollars, even for less time.*

SEC. 2. Said license shall be in force for the term of ^{License.} one year from the date thereof, but it shall not authorize the transaction of the auction business in more than one place in said city at any one time.

SEC. 3. This ordinance shall not apply to sales under ^{Exception.}

* Sec. 1 was amended December 7, 1864, so as to read as above printed.

Penalty.

execution, mortgage, deed of trust, order of court, or executor's, administrator's, or guardian's sale.

SEC. 4. Any person who shall violate any provision of this ordinance, shall, on conviction thereof, pay a fine of twenty dollars for each offense.

Passed and approved February 1, 1853, and August 17, 1859, and December 7, 1864.

CHAPTER X.

AN ORDINANCE to regulate the weighing of Hay and Coal, and measurement of Wood, and to prohibit the use of Spring Balances.

Public weighers and measurers appointed

SECTION 1. The City Council shall appoint one or more public weighers and wood measurers, to hold their office at the pleasure of the City Council for said city, who shall be sworn to perform the duties of such office to the best of their knowledge and ability, and in conformity with all the provisions of this ordinance.

Bond.

SEC. 2. The public weigher shall, for the faithful performance of his duties, give a bond of \$1,000, with sureties; the public wood measurer shall give a bond for \$500, with sureties, which said bonds shall be approved and revised by the City Council every year.

Permit.

SEC. 3. Upon the presentation and delivery of such approved bond and an affidavit of having been known to faithfully fulfill the duties of his office, the City Clerk is authorized to issue to said public weigher or wood measurer a permit; and for issuing such permit the Clerk shall be entitled to a fee of \$1, to be paid by said public weigher or wood measurer.

Clerk's fee.

SEC. 4. Such public weigher shall attend at all reasonable times, to weigh any load which any person may desire to have weighed; and for every load or draft he weighs he shall be entitled to the sum of ten cents; and he shall keep an account of the weight of such load by

Weigher's duties.

him weighed, and shall furnish to the person having such load weighed, a certificate for each load, which certificate shall contain the gross and nett weight of such load weighed by him; and he shall compute the nett weight into the other denominations according to the standard of weights and measures of the State of Iowa. And such a table of standard weights and measures of the State of Iowa shall be posted at some conspicuous place in his office.

SEC. 5. Such certificate of weighing shall be stamped ^{Certificate.} by the City Clerk with the city seal.

SEC. 6. Upon the payment of two dollars the City Collector shall deliver to such public weigher a receipt for the same, and upon the presentation of such receipt, the City Clerk is authorized to affix the city seal to one ^{City seal.} hundred receipts to be furnished by the public weigher. For stamping such certificates the City Clerk shall be entitled to a fee of ten cents per hundred, to be paid by said public weigher.

SEC. 7. No public weigher shall give a certificate for ^{Duties of} ~~weigher speci-~~ any load weighed by him, without having weighed the ~~load~~ ^{empty wagon or dray} within 24 hours before or 24 hours after such load was weighed, unless he has the written consent of the buyer of such load, in which case he shall put down the date when such empty wagon or dray was weighed last. And it shall be his duty to see that the empty wagon or dray is in the same condition as when the full load was weighed; it shall be the rule that the driver of a horse or mule team is always on the wagon or dray; that the driver of an ox team is always off the wagon or dray; and it shall be the duty of the weigher to mark on the certificate any deviation from this rule; and it shall be the duty of the public weigher to see that there is never more than one person on the wagon or dray, and that there is nothing on the wagon or dray, open to the eye, which does not properly belong to the load or wagon when the full load is weighed, and when the empty wagon or dray is weighed.

Liability.

SEC. 8. The public weigher is responsible for any damage done by the neglect of his duty, carelessness in weighing, and incorrectness of his scale.

Others prohibited.

SEC. 9. Any person acting as a public weigher without having complied with the provisions of this ordinance, shall pay, on conviction, a fine of ten dollars and costs for each offense.

Penalty against weigher.

SEC. 10. Any public weigher violating any provision of this ordinance shall be liable, (if there is no fraudulent intention proven), to a fine of \$5 and costs for the first offense; to a fine of \$10 and costs for the second offense; to a fine of \$25 and costs for the third offense, to be paid to the City Collector; and it shall be at the option of the City Council to repeal his permit after the third offense; if there is a fraudulent intention proven, on conviction thereof, to a fine of \$25 and costs, to be paid to the City Collector, for the first offense, with the repeal of his permit to act as public weigher.

Hay and coal.

SEC. 11. All hay and coal offered for sale in the city of Davenport shall be sold by weight, to be weighed by the public weigher appointed by the City Council, unless otherwise agreed between both parties.

Fraud of seller.

SEC. 12. If any person after having weighed a load or a parcel of a load shall remove any portion of such load or parcel of a load before delivery, with intent to defraud the purchaser, such person, on conviction thereof, shall pay a fine of not less than \$50 and costs, nor more than \$100 and costs.

Wood measured.

SEC. 13. All wood offered for sale in the city of Davenport shall be sold by measure, the same to be measured by the public wood measurer, appointed by the City Council, unless otherwise agreed between both parties.

Duty of measurer.

SEC. 14. The wood measurer shall attend at the levee between Brady and Ripley streets, at all reasonable times, and measure any wood which persons may desire to have measured, for which he is entitled to receive ten cents for each cord and fraction of a cord

when the quantity shall not exceed two cords; and for each additional cord or fraction of a cord, five cents. He shall be responsible for any damage occasioned by his neglect, carelessness or fraudulent measurement, and on conviction of fraudulent measurement he shall ^{Liability.} pay a fine of not less than \$10 and costs nor more than \$50 and costs to the City Collector, and his permit shall be repealed.

SEC. 15. If any person without the consent of the ^{Liability of seller.} purchaser shall sell and deliver in the city of Davenport any load of hay or coal otherwise than by weight, or without having it weighed by a public weigher, or any wood otherwise than by measurement, and without having it measured by the public wood measurer, he shall pay, on conviction thereof, a fine of not less than \$5 and costs, and not more than \$10 and costs, for each offense, to the City Collector.

SEC. 16. This ordinance shall be printed and a copy ^{posting.} of it shall be posted at a conspicuous place at the office of every public weigher.

SEC. 17. All ordinances heretofore passed regulating ^{Repeal spring balances.} the weighing and sale of hay and [coal, or any other article, measurement of wood, and to prohibit the use of spring balances, are hereby repealed.

Passed and approved July 12, A. D. 1865.

[NOTE.—See Chapter 34 for ordinance relating to inspection and measurement of lumber.]

NOTE.—Ordinances requiring wood to be measured and coal to be weighed by city weighers are not in restraint of trade and are valid. *Stokes v. N. Y. City*, 14 Wend., 87. See *ante* charter, pp. 39, 40.

CHAPTER XI.

AN ORDINANCE providing for the appointment of a City Solicitor.

SECTION 1. There shall be appointed whenever the ^{Appointment.} City Council shall deem it expedient, and at the first

regular meeting in April, in each year hereafter, some competent Attorney or City Solicitor, who shall continue in office until his successor is appointed.

Duty.

SEC. 2. It shall be his duty to give his legal opinion upon questions of law arising out of any ordinance, suit, claim, or demand, for or against the city; also act as legal adviser of any and all the city officers, so far as their official duties are concerned, when called upon for that purpose.

Duty.

SEC. 3. The City Solicitor shall report to the City Council any defects in any city ordinance, or in the powers of any officer which he may discover in the discharge of his duties, especially those having a legal bearing, and shall draw all ordinances when required to do so by the Ordinance Committee.

Draw contracts,
defend suits,
&c.

SEC. 4. He shall draw all contracts between the city and other parties, attend the Mayor's and Police Magistrate's court, and prosecute or defend, all suits or actions, for the violation of any city ordinance, or other matter, in which the city shall be a party, and shall take appeals in such cases as he shall deem the interest of the city requires; and prosecute or defend the same in the Appellate, District, or Supreme Court, and when, by reason of absence, sickness, or any cause, he shall not be able to attend to any of the duties required of him, he may, or the Mayor of the city may, appoint some one to act in his place for the time being, but at the cost of said Solicitor.

Other counsel.

SEC. 5. Assistant counsel may be employed in any case at the discretion of the Mayor or City Council.

Compensation.

SEC. 6. It shall be the duty of the City Solicitor to perform such other professional duties as may be from time to time by the City Council required; and said officer shall receive as a compensation for all said services, the sum of five hundred dollars per annum.

Passed and approved June 4, 1856.

[For further provision as to salary see Chapter 18; notice of suits served on City Attorney, see Chapter 89.]

CHAPTER XII.

AN ORDINANCE granting Cotes & Davies certain privileges.

[This ordinance granted certain privileges in the public landing, and expired by limitation, March 5, 1861, and is not re-printed.]

CHAPTER XIII.

ARTICLE 1.

AN ORDINANCE providing for the election of Mayor, Clerk, Treasurer, and Marshal, and defining their duties.

SECTION 1. There shall be a poll opened at such Election. place, in each ward in the city, as the City Council shall designate, on the first Saturday in April, in each year, at nine o'clock A. M., and continue open till six P. M., and at the discretion of the judges of election, until nine o'clock P. M., which shall be conducted in Time of, &c. all respects as are such elections for State and county officers in Iowa, for the election of a Mayor, Clerk, Treasurer, and Marshal, for the city of Davenport.

SEC. 2. The City Council shall appoint three electors Judges of. of said city for each ward, to act as judges and clerks of said election, who shall, after qualifying according to the laws of this State, receive votes for the offices aforesaid.

SEC. 3. The person receiving the highest number of Who elected. votes for the office voted for, shall be declared elected by the judges of said election.

SEC. 4. The persons so elected shall hold their Term. respective offices for the term of one year, and until their several successors are duly elected and qualified.*

* As to filling vacancy in Treasurer's office see Art. 4 of this Chapter.

Mayor to qualify. SEC. 5. The person receiving the highest number of votes for Mayor shall be declared elected, and such person shall qualify by taking the oath of office, and giving a bond with sureties, and in a penalty to the satisfaction of the City Council.

Bonds of Clerk, Treasurer and Marshal. SEC. 6. The Clerk, Treasurer and Marshal shall severally give bonds and security in such sum as the City Council shall require, and with such conditions as a majority of said Council shall, at their first regular meeting or special meeting thereafter, think proper to affix.

Mayor's duties. SEC. 7. Should the City Council neglect or refuse to affix the amount and designate the conditions of said bond, the Mayor of said city shall fix said amount, and designate the conditions thereof, which shall remain valid until the City Council shall determine said amount and conditions themselves.

Oath. SEC. 8. Said officers shall each take and subscribe an oath of office, which shall be endorsed on their respective bonds, in substance as follows :

I, A. B., do solemnly swear (or affirm) that I will discharge the duties of _____ of the city of Davenport; that I will omit no duty knowingly ; that I will see the several ordinances and charter of said city, so far as they relate to said office, enforced ; that I will cause all violations of the same to be inquired into, and will otherwise perform the duties required of me by the conditions of the within bond, faithfully, impartially, and according to the best of my knowledge and ability, so help me God.

Bonds preserved.

SEC. 9. Said bonds, when duly executed, shall be filed and preserved by the Clerk of said city, except the bond of the Clerk, which shall be filed and preserved by the Treasurer thereof.

Failure to qualify.

SEC. 10. On the failure, neglect, or refusal, of any officer, who shall be elected under this ordinance, to qualify as aforesaid within thirty days after his election, the office shall thereby become vacant, and the election,

Vacancy.

so far as it relates to that office, shall be null and void, and the same shall be filled in the same manner as if it had occurred by a voluntary resignation. Or if any officer shall violate his oath of office, it shall in like manner become vacant, and the vacancy in like manner be filled.

SEC. 11. Any officer charged with the violation of his oath of office shall be tried by the City Council, and shall have at least five days notice of the time and place of such hearing or trial, with a specification of all charges to be then and there brought against him; and, it is further provided that any officer, thus removed, shall not thereby be exempt from liability on his bond for neglect of duty, nor exonerated from punishment for crime, but he may be prosecuted therefor in the same manner as if no removal had been made.

SEC. 12. It shall be the duty of the City Clerk to prepare and have ready for the inspection of the Mayor and Aldermen, at the last regular meeting in March, of each year, an account of moneys received and expended by the said city since the last annual election, with the source from which they were derived, and the objects on which they were expended. He shall notify all officers of their election or appointment to office, and the time when they shall appear and qualify as such. He shall report at the end of his term the amount of orders allowed, and not drawn, in his hands, belonging to different persons; and he shall also perform such other duties as are or may be required of him by resolution or ordinance of said city.

SEC. 13. It shall be the duty of the City Marshal of the city of Davenport, to see that the ordinances of said city are enforced, when he knows of a violation of any of their provisions of his own knowledge, or when a complaint shall be made to him of their violation, in writing, signed by any citizen, stating of what violation he wishes to complain, the name of the violator, and the name of the witnesses to establish such violation.

said Marshal shall forthwith inquire, and if there is probable grounds to believe that such violation has occurred, he shall immediately institute suit before the proper tribunal for the recovery of the penalty for such violation. He shall make quarterly reports, and oftener if required by them, to the City Council, of his acts and doings as such Marshal. He shall pay over, monthly, to the Treasurer of the city, all moneys, and other property, in his hands, belonging to said city. He shall, at the last regular meeting in March, of each year, return the assessment roll of the past year, together with proper vouchers of his having paid over the entire revenue of the city for the year, which was possible to be collected.

Treasurer's duty. See Art. 3 of this chapter.

SEC. 14. It shall be the duty of the City Treasurer to receive and pay out, according to the requirements of the City Council, the revenue, funds, and property, of said city, and he shall, at the last regular meeting in March, of each year, and at such other times as required, make out and present a report to the City Council, showing the amount of money, of orders, and other property, on hand, of the city.

[NOTE.—August 5, 1863. An additional section known as Section No. 15 was passed, giving six (6) per cent. interest on city orders from date of presentment, but this section (15) was repealed by ordinance of July 6, 1864.]

ARTICLE 2.

AN ORDINANCE relating to Deputy Collector.

Assessor made
Deputy Collector.

SECTION 1. That the City Assessor shall be the Deputy Collector from and after the first day of March, until the last day of December of each year.

Duty of Deputy
Collector.

SEC. 2. It shall be the duty of the Deputy Collector to collect under the direction and at the office of the City Collector of the city of Davenport, all taxes and assessments, to keep a separate book, wherein shall be entered in several distinct columns, the amounts of cash, the amounts of city orders, and the amounts of road tax receipts received in payment of said taxes and assessments, and to pay over each and every day the amounts so collected to the City Collector.

SEC. 3. The Deputy Collector shall qualify as the ^{Bond and oath.} City Collector, but his bond shall not exceed \$2,000, subject to the approval of the City Council.

SEC. 4. The salary of the City Collector shall be, ^{Salary.} for the ten months term of his office, fifty dollars per month, payable monthly.

Passed and approved April 4, 1862.

[Amended as above printed, March 1, 1865. As to duties of Collector see Chapter 4.]

ARTICLE 3.

AN ORDINANCE to provide the manner in which the books and accounts of the City of Davenport shall be kept.

WHEREAS, The financial system of the city of Davenport should be such as to give a clear insight into all the financial affairs of the city, of all the money received and paid out, all the orders issued and paid and the amount of the floating debt—and by which the books of one officer shall balance, check and complete the books of the other officers; and

WHEREAS, This result can only be obtained by ^{some} having the duties of the Collector, Treasurer and Clerk clearly defined, so that all the money received goes through the hands of the City Collector, all the money paid out be paid by the City Treasurer, and that the principal book for the finances of the city be kept by the City Clerk;

Therefore, be it enacted by the City Council of the city of Davenport, That from and after the 1st day of April, A. D. 1865, it shall be the duty of the

1. CITY COLLECTOR (OR MARSHAL).

1. To receive all money paid to the city and give a ^{Marshal to re-} receipt for the same. For this purpose he shall keep ^{ceive all money.} two books with tags containing duplicate receipts; one book for taxes received and one for money otherwise Books. received.

Day-book and ledger.

Separate funds.

Pay over weekly.

Monthly report.

Treasurer when and how to pay out.

Day-book and ledger.

Cancel orders.

Monthly report.

2. To keep a regular day book of all the money received and paid over by him ; also a ledger in which he shall keep the following funds distinctly separate, viz : general fund, road fund and special fund, (the designatatives of which shall be taken from the order by which the tax is levied.) These three different funds may be sub-divided in, and the account kept separate for such sub-funds, as the Council from time to time may order.

3. To pay over to the City Treasurer at least every week all the money received, and take therefor the Treasurer's receipt in a book kept for that purpose, which receipt shall also show now much money received on each fund and sub-fund.

4. To make a full monthly report up to the first of every month to the City Council, stating how much money in total, how much on each fund, and how much on each sub-fund he has received, and paid to the Treasurer, and on hand.

II. OF THE CITY TREASURER.

1. To pay out money only on regular city orders, signed by the Mayor and Clerk of the city, except interest on orders and coupons.

2. To keep a regular day-book of all the money received and paid ; also a ledger in which he shall keep distinctly separate the different funds and sub-funds as hereinbefore provided for the Collector.

3. To cancel all city orders paid by him and mark thereon the date when paid, and when called for by the City Council or any one appointed by them for that purpose, to deliver to them the paid and canceled orders; he shall take their receipt therefor in his books, by which also the number, date and amount of each canceled and paid order must appear.

4. To make a full monthly report up to the first of every month to the City Council, stating how much money in total, how much on each fund, and how much on each sub-fund he has received, paid, and on hand ; also

how much money he has paid on orders issued since the 1st day of April, A. D. 1865, how much on orders issued previous to that time, and how much without orders, on interest on orders, and on coupons.

III. OF THE CITY CLERK. (SEE ART. 5.)

1. To keep an order book with tags containing duplicate orders. On said orders and tags he shall also designate for which funds and sub-funds the same are issued. It shall also be his duty on receipt from the City Council, or any one thereof, of the canceled and paid orders, to keep the same in separate packages and to mark each tag or duplicate of the said canceled and paid orders with the same mark as he has marked the package containing the same.

2. To keep a regular day-book of all the orders issued by him, in which there shall also appear when the same were ordered by the City Council; a ledger in which he shall keep distinctly separate the different funds and sub-funds as hereinbefore provided for the Collector, and in which he shall also keep an account with each city officer—and a receipt book in which he shall take a receipt for each order delivered.

3. To make a full monthly report up to the first of every month to the City Council, stating what amount of orders he has issued in total, for each fund and sub-fund, and their numbers.

4. To keep the monthly reports of the City Collector, Treasurer, and Clerk, (as hereinbefore provided for) on file as a day-book, also a main book or ledger, in which he shall keep the following accounts: "cash," "general fund," "road fund," "special fund," "order account," "old order account," "interest account," and "coupon account." In this book he shall enter in the above mentioned accounts as follows: The amount of money received as per monthly report of City Collector, cash must be debited with, and the general, road or special fund credited. The amount of orders issued as per monthly report of the City Clerk, the order account

Report.

Same.

must be credited with, and the general, road or special fund debited. The amount of money paid as per monthly report of the City Treasurer, cash must be credited with, and the order account, old order account, interest account, or coupon account debited. He shall strike the balance of this book every three months and report the same to the City Council.

5. To report to the City Council at the end of the financial year what amount and which numbers of the city orders issued since the 1st day of April, A. D. 1865, have not yet been paid, cancelled and delivered to him.

IV. OF THE FINANCE COMMITTEE.

Finance Committee—duties.

1. To examine the books and reports of the City Collector, Treasurer and Clerk at the end of every three months and to certify thereto in the books of those officers; also to take from the City Treasurer at the end of every three months all the cancelled and paid orders as reported by him in his monthly report, and deliver the same to the City Clerk for the purpose hereinbefore stated, and to take the Clerk's receipt therefor in a book kept for that purpose.

Report.

2. To report to the City Council at the next regular meeting after such examination, what amount of orders they have delivered to the Clerk, how large the floating debt of the city is from the orders issued since the 1st day of April, A. D. 1865; in what condition they have found the books of each officer, and whether the same balance and complete each other.

Same.

3. To make at the end of each financial year to the City Council a full report of the financial affairs of the city.

Books to be provided by city.

All the books to be kept by the city officers, as hereinbefore provided, shall be procured at the expense of the city, and be open for inspection at all reasonable times, and delivered to their successors at the expiration of their term of office.

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Passed and approved March 1st, A. D. 1865.

Resolved, That from and after the 1st day of April, A. D. 1865, the general fund shall be sub-divided in and kept separate for the following sub-funds : “Judgment account,” “Interest account,” “Coupon account,” “Police department,” “City Cemetery,” “Salaries for city officers,” “Fire Department,” “Public grounds and buildings,” “Wharfage,” “Gas,” “License,” “Board of Health,” “Tax Sales and Refunded,” “Printing, Advertising and Stationery,” “Removing nuisances,” “Incidentals.” And the road fund shall be sub-divided in and the accounts kept separate for the following sub-funds : “Street work,” “Material for streets,” “City stone quarry,” “Poll tax.”

Resolved, That the City Collector be required to leave a column in the tax book for lands sold for city taxes, and that it shall be his duty to record the same when they are redeemed.

Adopted March 1, 1865.

ARTICLE 4.

AN ORDINANCE to fill vacancy in Treasurer's Office.

That whenever a vacancy occurs in the office of the Treasurer of the city, the Mayor shall be, and is hereby authorized to fill the vacancy by appointment, and the officer so appointed shall, if confirmed by the Council, hold the office until the next general election thereafter. He shall qualify the same as if he had been elected.

Passed and approved Feb. 10, 1864.

[Amended Sept. 25, 1865, to read as above printed.]

ARTICLE 5.

AN ORDINANCE relating to the duties of City Clerk.

Official bonds
to be recorded
or preserved.

SECTION 1. It shall be the duty of the Clerk to record at length in the journal, or preserve in a separate book kept for that purpose, all official and other bonds taken by the city, but these need not be published in the printed proceedings.

Ordinances to
be recorded.

Compensation.

City orders.

Clerk responsi-
ble for books,
&c.

SEC. 2. It shall also be the duty of the Clerk hereafter to record at length in the journal, all ordinances or amendments thereto, passed by the City Council, for which he shall be allowed pay at the rate of five cents per hundred words. He shall also preserve in a book, with the proper certificate, a printed copy of each ordinance passed by the Council. And the City Clerk shall in no case issue an order unless the amount has been allowed by the City Council.

SEC. 3. The Clerk is made personally responsible for the safe custody of all books and papers belonging to his office, and shall in no case allow the original of any official book, record, or paper to be taken therefrom for any purpose.

Passed and approved Sept. 25th, 1866.

CHAPTER XIV.

AN ORDINANCE establishing the office of City Engineer and defining his duties.

Office created.

SECTION 1. The office of City Engineer is hereby established.

How chosen.

Term.

SEC. 2. The City Engineer shall be chosen annually by the City Council, on the first Wednesday of April, or such other time as the same may be vacant, and shall hold his office for the term of one year from the first Saturday in April, and in either case until his successor is duly elected and qualified.

SEC. 3. He shall be well skilled in the science of Qualifications, civil engineering and building, and the practical applicability thereof.

SEC. 4. He shall take the oath required of other city ^{Oath and bond.} officers, and shall give bond in the sum of two thousand dollars for the faithful performance of his duties.

SEC. 5. It shall be the duty of the City Engineer—

1st. To see to the protection of all real estate belonging to the city; to cause to be carried into effect all ordinances of the City Council concerning streets, alleys, and other public places; superintending the opening and grading of the same, and removing all obstructions therefrom. ^{Duties as to streets, &c.}

2d. To preserve in his office all maps, plats and surveys of the city, with all records, book, papers, and other documents relating thereto. ^{Records.}

3d. To exercise full supervision over all contracts made by the city with persons or corporations for the grading of streets or alleys; construction of public works, or erection of public buildings, and in all other cases where the interests of the city require his care and attention. ^{Contracts.}

4th. To keep in suitable books full and accurate accounts of all receipts and disbursements made under his supervision, and a systematic record of all transactions relative or pertaining to his office. ^{Accounts.}

5th. To report to the City Council, at its regular meeting in January and July of each year, and oftener if required, a general abstract of all his operations for and in behalf of said city during the previous six months, or since his last report, the contracts made, if any, the work executed, and remaining to be executed, the expenditures and disbursements, the amount remaining to be disbursed, and such other information as he may deem of interest to the city, or as the Council may require. ^{Reports.}

6th. To do and perform all other duties and acts ^{Other duties.} relating to the matters placed under his charge, as the

City Council, by vote or resolution, may from time to time require.

Employed by
lot owners.

Compensation

SEC. 6. Any person proposing to build upon, enclose or ascertain the location of any lot or parcel of land within the city limits, may apply to the City Engineer for the lines of the street adjoining said lot or parcel of land, and for the grade of such streets; and the City Engineer shall ascertain and mark the same, and give a certificate thereof, and for such service he shall collect of the person so employing him, the sum of three dollars, and if the same necessarily occupies him beyond the space of four hours, he shall charge the sum of fifty cents for each additional hour employed.

Lowest bidder.
Notice.

SEC. 7. All public works ordered by the City Council, unless otherwise directed, shall be let by the City Engineer to the lowest and best bidder, and approved by the City Council. Notice of the letting of any such work shall be given for two weeks, in such papers as the City Engineer shall order; in which the nature of the work, the place where the specifications may be seen, and the time when bids will be received, shall be stated.*

Bids.

SEC. 8. Bids for such work shall be signed by the bidder, enclosed in a sealed envelope, and not be opened until the day fixed in the notice, and then only in the presence of the Mayor of the city and the City Engineer, unless the Council order otherwise.

Same.

SEC. 9. Each bid shall be accompanied by a statement by the persons offered by the bidders as sureties, declaring their willingness to become such sureties, in event of the contract being awarded to the bidder; and shall also be accompanied by a bond to the city,

* ENGINEER—DUTY TO ADVERTISE.—As to duty to advertise for bids, see 19 Ind., 135; 22 N. Y., 162, and cases.

RIGHTS OF LOWEST BIDDER.—*Brady v. The Mayor*, 20 N. Y., 312; 17 id., 584; id., 457; 13 Barb., 567; 15 How. Pr. R., 428; 10 N. Y., 504; 4 Sandf. Sup. Ct. R., 221; 26 Barb., 240; 5 Ohio St., 234.

MEASUREMENT OF MASONRY.—See "Index" for ordinance on this subject.

OTHER POINTS.—See *ante*, p. 62.

in the sum of two thousand dollars, signed by the bidder and a respectable surety; conditioned that the bidder, if his bid be accepted, shall enter into a written contract to do the work bid for, according to the terms of the bid, at such time as the City Engineer shall require.

SEC. 10. Bids shall be opened by the City Engineer ^{same} on the day notified, at the hour of 12 o'clock, M., in the presence of the Mayor, and the lowest and best bid shall be accepted, if the sureties offered be accepted.

SEC. 11. The performance of all contracts let out, ^{Bond of con-}_{tractor.} shall be secured by bond, signed by the principal, and at least two sufficient sureties, to be approved by the Mayor, which penalties shall be determined by the Mayor, and the City Attorney, and the City Engineer.

SEC. 12. If the person whose bid is accepted shall ^{Failure of con-}_{tractor.} fail to enter into contract, as aforesaid, the City Engineer may award the contract to the next lowest bidder, or advertise for new proposals, as in his judgment he deem best for the interest of the city; and the person so failing to enter into contract, shall forfeit on the same ten per cent., for the use of the city, to be collected, by action, in favor of the city of Davenport.

SEC. 13. All contracts, after being drawn up, shall ^{Contracts ap-}_{proved and recorded.} be submitted to the City Engineer for approval, which, if given, shall be endorsed thereon, and the whole shall be recorded in the Engineer's office, in a book furnished for that purpose by the city.

SEC. 14. The City Engineer shall report to the City Council all violations of any contracts, and it may suspend its execution when the contractor fails to comply with the terms thereof, or with the direction of the City Engineer, in relation to and consistent therewith. ^{Violation of contract.}

SEC. 15. No person, excavating earth or stone, on any public street, alley or ground, belonging to the city, or other public place, under contract with the city, shall sell, or in any other way, dispose of the stone and earth so excavated, except under the direction of the City ^{Employees of city.}

Engineer, and any person violating this provision shall pay to the city three times the value of such property, to be recovered by action of debt in favor of the city of Davenport.

Requisites of
contract

SEC. 16. Every contract entered into by the City Engineer, as aforesaid, shall contain a clause, stating that the same is entered into, subject to the existing ordinances of the city, and to the power of the City Engineer or Council to suspend or amend the same for a failure on the part of the contractor to fulfill the same, or any portion thereof; but that such suspension or amendment shall not effect the rights of the city to all damages or penalties claimable by it on account of the contractor's failure.

Encroachments
on streets.

SEC. 17. In case any building or fence be found upon any street or alley in the city, it shall be the duty of the City Engineer forthwith to remove the same, and for this purpose he may call in the aid of the City Marshal when necessary, who shall attend at the place named by the Engineer, with all necessary aid, and shall proceed to remove the same, under orders of the City Engineer, and any person offering resistance to such removal, shall pay to the city the sum of fifty dollars, to be recovered by action in favor of the city of Davenport, provided the City Council be first consulted and their approval had.

Must not be
interested.

SEC. 18. The City Engineer, during his continuance in office, shall not be directly or indirectly concerned or interested in any contract made with the city for any public work, under the penalty of being removed from office by the City Council, and forfeiting twenty-five per cent. on the amount of such contracts to the city, to be recovered by suit against him and his sureties in favor of the city of Davenport.

SEC. 19. The City Council shall have the power to remove the City Engineer from office, whenever it clearly appears to them that he has been guilty of willful misconduct in office, or been guilty of gross negli-

gence or carelessness in the performance of the duties of his office.

SEC. 20. Whenever the City Engineer shall establish the grade of any street, he shall write out a description of the same, which description shall be incorporated into any ordinance which may adopt or change the same. Grades shall hereafter be established and changed by ordinance.*

SEC. 21. The salary of the City Engineer shall be five dollars per day for every day he is actually engaged in work for the city; *Provided*, the compensation shall not exceed six hundred dollars per annum.

SEC. 22. The City Engineer shall report monthly to the City Council, a full statement of the number of days he has worked for the city the month next preceding, together with the time and place the work was done.

Passed and approved January 4, 1854; December 30, 1857; August 5, 1858; May 18, 1859.†

CHAPTER XV.

AN ORDINANCE to provide for the appointment by the City Council of a Street Commissioner and Sexton.

SECTION 1. There shall be chosen annually, by the City Council, on the first Wednesday of April, after the annual city election, a Street Commissioner and Sexton, who shall hold their offices for the term of one

Street Commissioner and
Sexton
Term

* Sec. 20, above, was passed by City Council Sept. 12th, 1866.

† LIABILITY OF CITY FOR ACTS OF ENGINEER.—A private injury was caused by the fall of a bridge *caused by a defect in the plan arising from want of skill in the City Engineer.* On the maxim of *respondeat superior* the city was held liable.—*Dayton v. Pease*, 4 Ohio St. Rep., 80.

As to *respondeat superior* generally, see 5 CUSH., 292; 8 Ohio St. R., 258, (*quere* as to this last case,) and see 5 id., 38 (rightly decided); 2 Hilt. (N. Y.), 66; id., 410; 1 Black (U. S.), 39.

See also notes to city charter *ante* pp. 73, 75.

year from the first Saturday in April, and until their successors are duly elected and qualified.*

Bond and oath. SEC. 2. Said officers shall severally give bond, and qualify in the same manner as the City Clerk, Marshal, and Treasurer are required to qualify in the ordinance providing for their election.

Duties of Street Commissioner enumerated.

SEC. 4. It shall be the duty of the Street Commissioner to appoint two deputies, who shall be entirely under his control and supervision, but who shall receive the same compensation as is, or may be, allowed to said Commissioner. He shall have the oversight and supervision of repairs of streets within said city; collect all road taxes belonging to the same; render an account, annually, on or before the first day of January, to the City Council, showing the entire amount which has been received by him for poll taxes, and in a separate item the amount received by him as property road tax, and also any amount which may be appropriated from the City Treasury, and also where the same has been expended, and render any other account connected with his office, which the City Council may require. The compensation of the Street Commissioner shall be two dollars per diem, during the time he is actually employed under the direction of the City Council, to be paid from the road fund collected by him.†

Salary. See Chap. 17.

Duties of Sexton.

SEC. 5. It shall be the duty of the Sexton to attend at the city cemetery at all hours when called upon, and shall dig and prepare graves in the usual way, the same five feet deep, and of sufficient length and breadth to admit the coffin, (or rough box to contain it, if one should be used.) He shall keep a register, in which he shall record each individual's name buried, together with the time of burial, age, and residence of deceased, and the number of lot upon which they are buried. He shall see that all graves are properly filled up and rounded, and shall make a full report, at the last regular meeting

* Powers and duties of Street Commissioner, see Chap. 77.

† See Chap. 17 as to salary, which, being the later ordinance, governs.

of each month, of the above facts, and a report at the last regular meeting in March, which shall include, in brief, all previous reports to the City Council. He shall also report any damage done to the enclosure, and any fixtures or improvements the cemetery may have received during the year, together with such other facts as the City Council may, by ordinance or order, require. He shall receive as compensation therefor, for a person of ten years or upwards the sum of two dollars and a half, and for children under ten years, the sum of two dollars, and if required to attend to the duties in the night time, he shall be paid one dollar additional for each grave dug.

Passed and approved May 10, 1849.

[By ordinance of June 23, 1865, the Sexton is made special policeman for cemetery.]

CHAPTER XVI.

AN ORDINANCE relating to the City Assessor.

SECTION 1. At the regular meeting of the Council in December of each year the City Council shall elect a City Assessor, who shall hold his office for one year and until his successor is elected and qualified.*

SEC. 2. It shall be the duty of the City Assessor to take an assessment of the real and personal property within said city subject for taxation for county purposes, and to make out and return to the City Clerk, on or before the first day of May of each year, a list of all such property, with its value, and to do such other acts as the City Council may, from time to time, by ordinance or resolution, require.

SEC. 3. It shall be the duty of the City Assessor *in same person*, to take an assessment of all the real and personal property within said city, subject to taxation for city purposes; and all books, maps, charts, papers, etc.,

*This section adopted at Sept. meeting, 1866.

used in taking and making out said assessment, shall be held to belong to said city, and shall be retained in the office of the said City Assessor, and shall be delivered over to his successor in office, and other property of said city in the custody and control of said Assessor.

Salary.

SEC. 4. The salary of the City Assessor shall be four hundred dollars, which shall be in full compensation for his services; *Provided* however that he discharges the duties of said office in person, payable when said assessment list is completed and returned to the City Clerk, approved by the Council.

Bond.

SEC. 5. Before entering upon the duties of his office, the City Assessor shall give bond, with sureties, to be approved by the City Council, in the sum of fifteen hundred dollars, conditioned for the faithful performance of his duties in said office.

Office-room.

SEC. 6. The City Assessor shall keep and have an office, and as conveniently as may be to the office of the City Marshal; and all the books, papers, maps, and other property pertaining to said office, and not required to be delivered to any other city officer, shall be carefully kept and preserved in said office, subject to the inspection of all persons who may desire access thereto.

Repeal.

SEC. 7. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Plats.

SEC. 8. It shall be the duty of the City Assessor to make or cause to be made a plat book each and every year.

Passed and approved Dec. 15, 1858, Jan. 1, 1862.

[City Assessor also Deputy Collector, see Chap. 13]

CHAPTER XVII.

ARTICLE 1.

AN ORDINANCE relating to salaries.

SECTION 1. That hereafter the compensation of all

officers, and of the Mayor and Aldermen of the city of ^{Salaries fixed,} Davenport shall be as established by this ordinance, and in case no provision is made herein for receiving and retaining fees, salary and compensation by the officers in this ordinance, mentioned as perquisites of office ^{Perquisites forbidden.} or position, none shall be so retained, but the same shall be accounted for and paid into the City Treasury as funds belonging to said city, whether received by virtue of an office under an ordinance, or of an office created by the city charter, or otherwise, and shall be paid over to the City Treasurer within five days after such officer received the same.

SEC. 2. As a full compensation for faithful official ^{Marshal and Clerk.} duty, the following per annum allowances are hereby made, payable semi-quarterly, to the respective officers herein named, to-wit :

To the City Marshal, eight hundred dollars.

To the City Clerk, three hundred and fifty dollars.*

In addition to the above annual allowance, the said Clerk shall be entitled to receive fees that are now or ^{Clerk's fees.} hereafter may be allowed for issuing licenses, making certificates, and furnishing transcripts of papers and records in his office, and for affixing the seal to official documents, for such services the same fees and compensations as are allowed the Clerk of the District Court for similar services ; *Provided, however,* that in no case ^{City not liable.} shall the city of Davenport be required to pay for such services. To the City Marshal, fees as police officer, to be the same as is allowed Sheriffs for similar services ; *Provided, however,* that the city of Davenport shall in no case be required to pay for such services, unless such compensation as the City Council may deem reasonable and just for the removal of nuisances, and for complying with special orders of the City Council. ^{Marshal's fees.}

SEC. 3. The Police Magistrate shall receive fees as ^{Police Magistrate's fees.} costs, such as are now or hereafter shall be provided for

* These sums fixed by ordinance passed April 13, 1865.

Who pay fee.

by law for Justices of the Peace for similar services. Nor shall said Police Magistrate hereafter, by virtue of his said office, receive any amount by way of salary or otherwise, out of the treasury of the city of Davenport, or retain the same from any amount of collections in his possession belonging to said city. Nor shall the city of Davenport pay costs for suits, complaints, or prosecutions commenced, carried on, or determined on original, mesne or final process, whether in criminal or civil proceedings, unless complaint is lodged before him by the Mayor, City Attorney or Marshal, nor then if the defendant is found guilty, and the amount of costs found due against him can he made of execution; *Provided*, however, nothing herein contained shall prevent any person or persons entering complaint for violation of the ordinances of said city before said Police Magistrate, at their own costs and charges, without any liability attaching to said city by reason of such complaint, and the city shall in no event be liable therefor.

Passed March 23, 1859. (Sec. 4 repealed).

ARTICLE 2.

A NEW ORDINANCE to regulate the compensation of the Mayor and the Aldermen of the city of Davenport.

Mayor's salary.

SECTION 1. *Be it enacted by the City Council of the city of Davenport,* That from and after the first Saturday in April, 1864, the Mayor of said city of Davenport shall receive in full compensation for his official services, a salary of one hundred dollars per annum, payable quarterly.

Aldermen's salary.

SEC. 2. That from and after the first Saturday of April, 1864, each Alderman of said city of Davenport shall receive in full compensation for his official services, a salary of one hundred dollars per annum, payable quarterly.

SEC. 3. That all ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

Adopted August 3, 1864.

ARTICLE 3.

AN ORDINANCE providing for the salaries of certain city officers.

SECTION 1. The salaries of the officers hereinafter named shall be as follows, to-wit: The salary of the Street Commissioner shall be \$500 per annum; the salary of the City Attorney shall be \$500 per annum; ^{City Attorney.} the salary of the City Treasurer shall be \$250 per ^{Treasurer.} annum.*

SEC. 2. Said salaries shall be paid quarterly, and when payable, shall be paid in full for all services, but the City Attorney shall be allowed traveling expenses in addition to his salary, whenever professionally engaged outside of Scott county.

SEC. 3. All ordinances and parts of ordinances conflicting herewith are hereby repealed.^{Repeal.}

Passed and approved May 1, 1861.†

ARTICLE 4.

AN ORDINANCE to secure the attendance of Members of the Council and other officers at the meetings of the Council.

SECTION 1. It shall be the duty of the Mayor and of each Alderman to attend every meeting, regular and special, of the Council, and whoever fails to do so shall forfeit for each meeting which he fails to attend the one-twelfth of his annual salary, and the same shall be deducted from his salary; and said forfeiture shall not be remitted by the Council unless the member files an affidavit at the next meeting of the Council, stating that he was absent from the city at the time of the meeting, or that he was prevented by sickness of himself or family, or by other unavoidable cause, from attending the

* Amended as to City Treasurer so as to read as above printed, April 13, 1865.

† Deduction, for absence or neglect of duty, from salaries, see Chap. 62.

SALARY OF STREET COMMISSIONER.—Salary of Street Commissioner fixed at \$500 from and after April, 1866, by the action of the City Council on Sept. 29, 1866.

meeting of the Council. This section shall not apply to any member who shall fail to attend a special meeting of which he has had no notice.

Same as to
Marshal, Clerk,
and City At-
torney.

SEC. 2. It shall be the duty of the Marshal, Clerk, and City Attorney to attend every such meeting, and if they or either of them fail to do so, they shall forfeit the sum of ten dollars for each failure, to be deducted from their salaries, unless the amount be remitted by the Council upon an affidavit filed similar to the above required from the Mayor and the Aldermen.

Passed and approved Sept. 13. 1866.

[NOTE.—Compensation of Policemen, see Chap. 43. Power of Council to fix salaries, &c., see *ante* pp. 49, 44, 57, 74].

CHAPTER XVIII.

ARTICLE 1.

AN ORDINANCE in relation to Draymen, Carmen, Hackmen, &c.

Draymen, &c.,
to obtain license SECTION 1. *Be it enacted by the City Council of the City of Davenport,* No person shall, within the limits of the city of Davenport, be permitted to perform the duties which ordinarily belong to a public drayman, carman, teamster, wagoner, cabman, hackman, or coachman, for the carriage of goods, wares and merchandise, baggage or other property, or passengers, for profit or gain, without first having obtained a license from the Clerk of the city, for which he shall pay yearly to the City Marshal the sum of five dollars, and a fee of fifty cents to the Clerk for issuing the same.

Fee for.
See Art. 3 of
this chapter.

Bond required. SEC. 2. Before any such drayman, carman, teamster, wagoner, cabman, hackman, or coachman shall receive such license, he shall give a bond in the penal sum of five hundred dollars, with security, to the city of Davenport for the use of whomsoever it may concern, to be approved by the Clerk, conditioned that said drayman,

carman, teamster, wagoner, cabman, hackman, or coachman, shall perform all the duties belonging to said drayman, carman, teamster, wagoner, cabman, hackman, or coachman; that he will promptly and safely deliver all passengers at the place of their destination within said city; and all property left with him to the person or persons for whom it is marked or designated, in a reasonable time after its delivery; and that he will abide by and perform all ordinances, orders or resolutions which the City Council may hereafter adopt for his government and direction.

SEC. 3. Said drayman, carman, teamster, wagoner, ^{Number on dray, &c.} cabman, hackman, or coachman, shall cause the number of his license to be painted on his dray, wagon, cart, cab, hack, or coach, in some conspicuous place, and shall furnish to all persons, when demanded, a printed or written receipt for whatever goods, wares, merchandise ^{Receipt.} or other articles, are delivered to his care.

SEC. 4. The said drayman, carman, teamster, wagoner, cabman, hackman, or coachman, when his bond has been given and approved, his dray or cart numbered, and his license obtained, shall be allowed the following charges, towit: For carrying one passenger any distance within said city not exceeding one mile, twenty-five cents; for every additional mile or fraction of a mile, twenty-five cents more; for the drayage, loading and unloading of any load of goods, wares, merchandize, lumber, passengers, baggage or articles of personal property, not exceeding two thousand pounds, any distance not exceeding one mile, the sum of twenty-five cents, and for any greater distance, for every additional mile or fraction of a mile, twenty-five cents more; and if such load exceed two thousand (2,000) pounds in weight, for any distance not exceeding one mile, the sum of fifty cents, and for every additional mile or fraction of a mile, thirty-five cents more; for one day's work with horse and dray or cart and driver, the sum of two dollars and

Penalty.

fifty cents ; for one day's work with wagon, two horses and driver, the sum of three dollars and fifty cents.

SEC. 5. Any person who shall undertake to perform the duties of drayman, carman, teamster, wagoner, cabman, hackman or coachman, without having taken out a license and given bond as hereinbefore provided, in accordance with this ordinance, shall be fined not less than ten nor more than fifty dollars, on conviction before the Mayor or Police Magistrate, with costs.

Same.

SEC. 6. If any drayman, carman, teamster, wagoner, cabman, hackman, or coachman, shall charge, demand, or receive from any person a greater sum for his services, as such drayman, carman, teamster, wagoner, cabman, hackman, or coachman, than the amounts authorized to be charged therefor, or if he shall refuse to receive goods for drayage, or to deliver to the proper person, any baggage, goods, wares or merchandize, or other articles of personal property, or to transport passengers, without being paid a greater sum for the drayage or carriage thereof, than he is authorized to charge, the proper charge being tendered for his services, he shall for each offense forfeit and pay a fine to said city not exceeding ten dollars and costs.

SEC. 7. That an ordinance passed and approved 12th July, A. D. 1856, is hereby repealed, *Provided*, that this section shall not invalidate licenses already issued for their unexpired term.

Passed and approved November 1st, A. D. 1865.

[NOTE.—Charter gives Council power to license, tax, regulate and fix prices of draymen, &c. *Ante*, p. 39.

ARTICLE 2.

AN ORDINANCE concerning Draymen and Teamsters.

Stopping places defined.

SECTION 1. That no owner or driver of any licensed hackney coach, cab, omnibus, dray, cart, or other carriage or vehicle, shall make any stand or stopping place

in any street, lane, avenue or alley in this city, except in the places designated as follows, namely :

On the eastern side of Le Claire street, between Fourth and Sixth streets.

On the north side of Depot street.

On or along the northern and southern side of Front street, and on the Levee.

On and along the sides of any street adjoining any public square.

On and along the eastern side of Iowa street, between Third and Fifth streets.

On the side of any street, lane, avenue, or alley, in East Davenport, east of Bridge Avenue, in North Davenport, north of Twelfth street, and in West Davenport, west of Warren street, subject to the direction of the City Marshal.

SEC. 2. No owner or driver of any hackney coach, ^{Conduct of drivers regulated.} omnibus, dray, cart, or carriage, or other vehicle, while waiting for employment at any stand, railroad depot or other public place in said city, shall unnecessarily snap or flourish a whip, or use indecent or profane language, or be guilty of boisterous or loud talking or any disorderly conduct, or vex or annoy travelers or citizens, or obstruct any sidewalk, and such owners and drivers are required to obey any and all regulations and rules adopted by any railroad company or other association or person for the promotion of order at any public landing, railroad depot, or other public place in said city, not inconsistent with the ordinances of the city, and the police regulations thereof.

SEC. 3. The City Marshal, any police officer, or member of the police department shall have power to arrest any person offending against any or either of the provisions of this ordinance, or any person who refuses or neglects to desist from any such offense when commanded ; and such officer or either of them shall have power to give any direction which they may deem necessary for the preservation of good order and con-

venience of the public, at any railroad depot, termination, public place, station or steamboat landing within the city ; and no owner or driver of any of the vehicles mentioned in this ordinance shall refuse or neglect to obey such directions, or shall interfere with any officer as to such directions, or shall resist or interfere with any such officer in the discharge of his said duties.

Disturbance prohibited.

SEC. 4. No driver of any hack, coach, dray, or other vehicle, shall make any disturbance in or about any landing, depot or other public place, or shall make use of any rude or indecent language.

Penalty.

SEC. 5. Any person who shall violate any or either of the provisions of this ordinance, or any section, clause or provision of any section thereof, or who shall neglect or fail to comply with any or either of the requirements thereof, shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, pay a fine of not less than five nor more than twenty dollars, in the discretion of the Mayor or Police Magistrate before whom such conviction is had, and shall in addition thereto, in the discretion of the Mayor, forfeit his license.

Prior licenses.

SEC. 6. Nothing herein contained shall affect any license heretofore issued, and all persons heretofore licensed shall in all respects be subject to the provisions of this ordinance.

Repeal clause.

SEC. 7. All ordinances and resolutions in conflict with this ordinance, be and the same are hereby repealed.

Passed and approved June 16, 1858.

ARTICLE 3.

AN ORDINANCE relating to Dray, Wagon, and Coach Licenses.

Term of license.

SEC. 1. That hereafter all licenses issued by the Clerk for drays, wagons and coaches, shall be for the term of one year, commencing January 1st and ending December 31st of each year.

[The remainder of this section is repealed by Sec. 1, Art. 1, of Chap. 18].

Passed and approved Feb. 1, 1860.

[Amended December 14, 1864; and see also Chap. 18, Art. 1, Sec. 1.]

CHAPTER XIX.

AN ORDINANCE to prohibit the discharge of fire-arms, fire-crackers, and rockets within the city.

SEC. 1. No person shall discharge any gun, pistol, ^{what prohibited.} or other fire-arms, or use or discharge any fire-crackers, rockets, or any other description of fire-works, within the limits of said city, without permission in writing from the Mayor.

SEC. 2. Any person violating any provision of this ordinance, shall pay a fine of not less than two dollars nor more than ten dollars for each offense.

Passed and approved June 11, 1842, and January 21, 1855.

[NOTE.—See charter, pp. 39 and 40, as to power of Council to pass ordinances of this character].

CHAPTER XX.

ARTICLE 1.

*AN ORDINANCE to prevent the increase of and to prohibit dogs from running at large in the city of Davenport.**

SEC. 1. It shall not be lawful for any animal of the dog kind to run at large in the city of Davenport, from the first day of June until the first day of September of each year, unless the same be securely muzzled, so

* See Index—Vicious Animals.

Penalty.

that no injury can possibly result from the bite of such animal.

SEC. 2. Any animal of the dog kind, so found running at large without being muzzled as aforesaid, is hereby declared a nuisance, and it shall be the duty of the Marshal to kill such dog.

Proclamation.

SEC. 3. The Mayor may, at any time, issue his proclamation directing the owners of dogs to confine or muzzle their dogs for such length of time as he thinks proper, and any of the canine species found running at large without being so muzzled during the time named in said proclamation, shall be killed.

Marshal's duty.

SEC. 4. The Marshal is hereby required to kill a bitch found at large in the streets of the city, while in heat.

Passed and approved April 22, 1854, and July 14, 1855.

ARTICLE 2.

AN ORDINANCE providing for the registering, impounding and taxing of dogs.

When may run
at large.

SEC. 1. *Be it enacted by the City Council of the City of Davenport,* That it shall not be lawful for any animal of the canine species to run at large in the city of Davenport, from the first day of June until the first day of September of each year, unless the same be securely muzzled, so that no injury can result from the bite of such animal, nor at any other time of the year, unless in accordance with the provisions of this ordinance.

Who owner.

SEC. 2. Any person shall be considered as the owner of a dog who shall harbor or let the same habitually remain or be fed in or about his or her house, store, or enclosure; and it shall be the duty of every such owner of a dog to register the same with the City Clerk, as provided in Sec. 3 of this ordinance.

Registry re-
quired.

SEC. 3. Any owner of a dog shall, on making application to the City Clerk to register the same, receive a

Check.

brass or copper check therefor, which check shall be numbered in the regular corresponding order of the registry book; and the Clerk shall charge therefor one dollar as tax to go into the City Treasury, and thirty cents as registry fees, to belong to the Clerk. The check so delivered by the Clerk shall be secured around the neck of the dog registered, and any person who shall put upon their dog any check of the kind referred to herein, except it shall have been received from the Clerk, shall be fined five dollars; and it shall be the duty of the Marshal to consider such dog as a nuisance, and dispose of the same as is provided in section four herein.

SEC. 4. Any dog found running at large between the dates specified in section first of this ordinance without a muzzle, or at any time of the year, without a check provided for in section three of this ordinance, is hereby declared a public nuisance, and it shall be the duty of the Marshal to cause such dog so found to be taken up and placed in a pound to be provided by the Marshal, and shall be kept therein for the period of two days, when, if no person shall claim the same, the Marshal shall offer the said dog at public auction without notice, and if no bid to the cost of one dollar be received therefor, it shall be the duty of the Marshal to kill such dog.

SEC. 5. Any person applying at the pound for any dog that may have been impounded, shall, before receiving such dog from the Marshal, pay into his hands a penalty of one dollar for each dog delivered to the said applicant, and shall in addition cause said dog to be registered as provided for in section three of this ordinance.

SEC. 6. Whenever any dog shall be found unregistered, the Marshal shall cause the same to be done and collect the expense and tax therefor, from the owner of such dog, and whenever any owner of any dog shall refuse to pay any tax or charges created by this ordi-

Fee and tax.

Penalty.

Impounding.

Penalty.

lected.

nance, on his or her dog, the Marshal shall proceed by levy and distress upon the property of said owner to collect such tax or charges, the same as is provided for in any other delinquent taxes.

Penalty.

SEC. 7. Any person found violating or evading this ordinance, or who may refuse to register their dog, or who shall deny ownership of any dog belonging to them, shall be subject to a fine of not less than one, or more than ten dollars.

Marshal's fee.

SEC. 8. The City Marshal shall receive from the city fifty cents for each dog by him taken up and impounded or killed. This amount is to be collected from the owner and refunded to the city.

Marshal's duty.

SEC. 9. The Marshal is hereby required to kill any bitch at large in the streets of the city, while in heat; and the killing of dogs by him, in pound, shall be done in any manner, except by poison, as he may think proper.

Repeal.

SEC. 10. All ordinances or parts of ordinances in conflict with the provisions of this ordinance, are hereby repealed.

Passed and approved June 29, 1859.

*AN ORDINANCE amending an ordinance providing
for the registering of dogs.**

Amendment.

SECTION 1. *Be it enacted by the City Council of the city of Davenport,* That so much of the ordinance entitled "An ordinance providing for the registering, impounding and taxing of dogs," passed June 29, 1859, be so amended as not to compel the Marshal to impound said dogs, but authorize him to kill them upon sight, in any manner he may choose.

* Under the ordinance as amended, the Marshal has an election either to impound or kill. If he chooses to impound he must proceed strictly as provided in the original ordinance. Whether he impounds or kills, the owner of the unregistered dog is liable to pay the tax, and also to the penalties prescribed by the ordinance.

See as to power of City Council, *ante*, p. 38.

SEC. 2. All ordinances in conflict with this be and are hereby declared repealed.

Passed and approved June 19, 1861.

CHAPTER XXI.

AN ORDINANCE for preventing fires in the City of Davenport.

SEC. 1. There shall be appointed annually, on the first Wednesday in April, one or more Fire Wardens for said city, who shall serve for one year unless sooner removed by the City Council, and shall perform such duties as shall be required of them by the ordinances of said city, and to receive such compensation as the City Council may deem reasonable and right.

SEC. 2. The Fire Warden or Wardens are hereby authorized to enter any house or building, lot or premises, in said city, between sun-rising and setting, on any week day, for the purpose of examining any fire-places, hearths, chimneys, stoves or stove-pipes, ovens, boilers, kettles, or other apparatus or fixtures, which may be dangerous in causing or promoting fire, and when any danger shall appear from any apparatus as aforesaid, he or they may direct the owner, agent, or occupant of any premises containing any of the dangers aforesaid, in writing, to remove, alter, or amend the same in such manner, and within such time as they may deem reasonable and just; and any person or persons who shall resist the entrance of the Fire Warden or Wardens, as aforesaid, into any premises as aforesaid, or shall neglect or refuse to attend to the directions given for altering, amending, or removing any of the dangers aforesaid, shall be considered to have resisted the provisions of this ordinance, and shall be liable to the fine herein-after named.*

* Further as to additional duties of Fire Wardens, and constituting Aldermen *ex-officio* Fire Wardens, see ordinance relating to Fire Department; see index, "Fire Department;" also, Chap. 24 as to fire limits.

Stoves.

SEC. 3. It shall be the duty of persons using a tight stove or stoves, in any house, store, shop, or building within this city, to have a metal plate, or a platform of stone, brick, sheet-iron, zinc or earth under the said stove or stoves, extending at least six inches in every direction beyond that part of the lower plate that fronts the door of said stove or stoves; and all stove-pipes, at their intersection with any floor, partition, roof, or side of a house through which they pass, shall be made to pass through a crock or tin ventilator; or if it pass through a window, it shall be enclosed with tin or other metal, and all chimneys shall extend at least two and a half feet beyond the roof or side of a house through which they pass, and if a stove-pipe through the side of a house, it shall be capped with a cross-pipe not less than eighteen inches in length; and no person shall be permitted to place a stove-pipe through any building so as to project into the street.

Combustibles
in streets.

SEC. 4. No person or persons shall burn any shavings or other combustibles in any street, lane, lot, yard, square, or beach in this city, except those whose business necessarily requires out-door fire, (not then, if, in the opinion of the Fire Warden, the fire endangers any building,) and shall be immediately extinguished so soon as the purpose is effected for which it was built, nor shall it be lawful for any person to boil varnish or oil within twenty feet of any building.

Hay, &c.

SEC. 6. No person shall put or keep any wheat, rye, oats, barley, hay, straw, or fodder in sheaf, stack or pile, within one hundred feet of any building wherein a fire may be kept, (except it be in a stable, barn or ware-house,) nor in any dwelling house where fire is used for any purpose, nor shall any owner or occupant of any stable within the limits of said city, or any person in their employ, be allowed to use therein a lighted candle or any other light except the same be secured within a tin, horn or glass lantern.

Lights.

SEC. 6. If any chimney within said city shall take

fire by reason of it not having been properly cleaned or ^{Cleaning chim-}
swept, the owners or occupants of the house to which
said chimney appertains, shall forfeit and pay the sum
of five dollars, and no person shall set fire to their chim-
neys for the purpose of cleaning the same, except in the
day time, nor then, unless it is raining or there is snow
on the roofs of the houses.

SEC. 7. Any person who shall violate any provision ^{Penalty.} of this ordinance shall pay a fine of not less than five dollars, nor more than twenty dollars, for each offense.

Passed and approved June 27, 1848.

[NOTE.—Charter gives Council full power to prevent and extinguish fires; *ante* p. 39. See Gunpowder ordinance, Chap. 102; also Chap. 24.

CHAPTER XXII.

AN ORDINANCE in relation to Depot and Farnam streets.

SECTION 1. The street laid out upon the plat of the ~~Depot street.~~ city, east and west, between Le Claire and Farnam streets, and south of and adjoining the depot grounds of the Mississippi and Missouri Railroad, shall be hereafter known as "Depot street," and said street is hereby widened fifteen feet, by taking a strip of that width from the depot grounds of said railroad company, which said strip of land is granted by said company to the city, without compensation, in consideration of the establishment and maintainance of the grade of said street and a portion of Farnam street, as hereinafter set forth.

SEC. 2. The grade of Depot street is hereby estab-^{Grade.} lished in accordance with the profile filed as follows, to-wit: Commencing at the east line of Le Claire street at the natural surface, and rising from thence three feet in one hundred, for a distance of two hundred feet, and thence on a level to the end of said street. The

grade of Farnam street, from the north line of Fourth street to the depot grounds as aforesaid, is hereby established in accordance with the profile aforesaid, as follows, to-wit: commencing at the north line of Fourth street, at the natural surface, and rising from thence ten feet to one hundred feet for a distance of one hundred and thirteen feet, thence on a level to the depot grounds as aforesaid.

Not alterable. SEC. 3. If the Mississippi and Missouri Railroad company, by their executive officer, shall file their assent to this ordinance, and a release of the lands taken as aforesaid, within ten days from this date, the city agrees to keep and maintain the streets and grades as herein set forth, and not alter the same without the consent of said company.

Provided, however, that said railroad company, nor any person acting by their order, shall change the grade of the south half of said Depot street, between the east side of Le Claire street and the west side of Farnam street, from what the same now is, nor permit the same to be changed without the consent of the City Council, and the owners of property fronting on that portion of the street for the term of five years.

Passed and approved October 1, 1856.

CHAPTER XXIII.

AN ORDINANCE for the continuation and extension of Fourth street, in the city of Davenport, eastwardly and westwardly.

Extension.

SECTION 1. Fourth street, in the city of Davenport, is hereby extended eastwardly from its present termination, as laid out by Antoine Le Claire, until it intersects with the river on Front street, at or near the west end of the bridge of the Mississippi and Missouri Railroad, and from the east line of land of Samuel Hirsch, west-

ward through said Hirsch's land to the western boundary thereof, both extensions of which shall be not less than eighty feet.

SEC. 2. It shall be the duty of the City Engineer, ^{Survey.} forthwith to survey said extension of Fourth street, as above specified, and make a proper plat of such survey, showing the names of the parties owning the lands proposed to be taken by such extension, and return such to the Mayor of the city.

[The balance of this ordinance is not printed, as it simply refers to the mode by which the damages shall be assessed, the mode prescribed having since been changed by the amended city charter of January 23, 1857.]

Passed and approved July 16, and September 10, 1855.

CHAPTER XXIV.

ARTICLE 1.

AN ORDINANCE establishing and regulating Fire Limits.

SECTION 1. No building or additions to buildings of ^{Fire limits defined.} wood, except privies or stables, not to exceed twelve feet in height, at highest point, shall be erected or moved into that portion of the city of Davenport bounded and described as follows, to-wit: commencing at the point where Scott street intersects the southern boundary of the city, thence north along Scott street up to Fifth street, thence east along Fifth street to Iowa street, thence south along Iowa street to the southern boundary ^{No wooden buildings except by special permit.} of the city, thence west along the southern boundary of the city to the place of beginning, except by special permit of the City Council on application in writing, signed by owners of two-thirds of the block in

which such building or additions to buildings are to be placed.

Levee included. SEC. 2. The public levee of the city is included within the fire limits, and no lessee of the city shall hereafter erect any building of wood upon the same, or make additions of wood to existing buildings, without the special action of the Council first had.

Privies and stables.

SEC. 3. Within the fire limits aforesaid, no privies or stables of wood shall be erected or added to unless by the written consent of the Mayor, and then only when it shall appear to him that such building is designed only for the purpose of a privy or stable, and the same shall in no event be built to front on the street, but shall be built in the rear of main store or brick building, and in such safe manner as not to damage adjoining property. And within the limits aforesaid the Council may, by special permit, authorize the erection of frame buildings, application, in writing, therefor being first made and signed by the owners of not less than two-thirds of the block upon which such building or addition is to be erected or placed.

Thickness of walls.

SEC. 4. The walls of any brick or stone building erected within said limits shall be of at least 8 inches in thickness.

Penalty.

SEC. 5. Any building or additions of buildings erected within said limits in violation of this ordinance is declared a nuisance, and shall be immediately abated by the City Marshal; and the person or persons engaged in building or aiding to build the same, shall pay a fine of not less than \$10 and not more than \$100, to be recovered in the name and for the benefit of the city of Davenport by suit before the Police Magistrate or Mayor.

Ordinance construed.

SEC. 6. This ordinance shall be so construed as to prevent any frame buildings, the erection of which is herein prohibited, from being placed within the limits above defined, whether the same be by removal or otherwise.

SEC. 7. All other ordinances on the subject of Fire ~~Repeal~~.
Limits are hereby repealed.

Passed and approved September 25, 1866.

[NOTE —Charter gives power to pass this ordinance. See *ante*, p. 89.]

ARTICLE 2.

*AN ORDINANCE to number the buildings within
the Fire Limits.*

SEC. 1. All property-holders owning property within ^{Buildings numbered.} the fire limits, shall cause their property fronting the public streets and avenues to be numbered, as herein-after prescribed.

SEC. 2. The property within said limits shall be now, numbered on all streets running north from the Mississippi River by commencing on said streets at their junction with Front street, and the numbering shall be on every twenty feet of ground running northward, by commencing with number one on the first twenty feet on the east sides of said streets, and with number two on the west sides of said streets, and so on the entire length of said streets to the northern boundary of said fire limits. The numbering on the streets running east and west through the city shall commence on Brady street—all numbering in said streets east of Brady commencing with number one on the first twenty feet on the south side of said street, and with number two on the first twenty feet on the north of said streets, and so on, giving a number to each twenty feet of ground on each side of said streets. The numbering shall be the same westward from Brady street on said streets, giving a number to each twenty feet of ground. In all the numbering of lots on the streets whenever a fraction of land less than twenty feet occurs, it shall be designated by the number immediately before it, with the figure $\frac{1}{2}$ added.

SEC. 3. The numbers on streets east from Brady ^{same.} shall be known as number one, two, three, etc., East Front, East Second, and so on to the fire limits. Those

on the west side of Brady street shall be known as number one, two, three, etc., West Front, West Second, West Third, and so on.

Painted.

SEC. 4. The numbers shall be painted conspicuously on pieces of tin two inches wide by three inches long, and shall be nailed to the first story front of all buildings erected in the limits prescribed, or the numbers may be painted upon the front of the building, door-posts, etc., on the premises of such lot-owner.

Penalty.

SEC. 5. If any person shall neglect or refuse to comply with the provisions of this ordinance for a period of two weeks after this ordinance shall take effect, the City Council may order the same to be done at the expense of owners of property to be numbered within said limits.

Passed and approved December 2, 1857.

ARTICLE 3.

AN ORDINANCE relating to the establishment of lumber yards within the fire limits.

Lumber yards
in fire limits.

SEC. 1. No person shall keep, or establish, or continue a lumber yard for the deposit or sale of lumber within the fire limits of the city of Davenport, except by special permit of the City Council, on application in writing, signed by the owners of two-thirds of the property of the block in which said lumber yard is situated.

Penalty.

SEC. 2. Any person who may violate the provisions of this ordinance, shall forfeit and pay a fine of not more than one hundred dollars and not less than ten dollars for the first offense; if the yard is continued in violation of this ordinance for the space of six days after the first fine, it shall be a second offense, for which the party shall be fined not less than twenty-five dollars nor more than one hundred dollars, and each subsequent continuance of the lumber yard for six days shall be another offense, for which the party shall be fined not less than twenty-five dollars.

SEC. 3. This ordinance shall not apply to persons ^{exception.} who now have lumber yards within the fire limits, provided they have been established in accordance with the ordinance "relating to the establishment of lumber yards within the city limits," passed and approved July 16, 1862, which said last named ordinance is hereby repealed.

Passed and approved September 19th, 1866.

[NOTE.—See Charter, *ante*, p. 39, as to power of city to prevent fires. See also Chaps. 21, 88.

ARTICLE 4.

AN ORDINANCE in relation to the manufacture and storing of kerosene, benzine, and other oils and easily inflammable substances.

SEC. 1. No person, company, or corporation shall manufacture, or carry on, or continue any manufactory or establishment for the purpose of making, producing, refining, distilling, or in any manner generating coal or earth oil, petroleum, kerosene, gasoline, carbon oil, benzine, benzole, naphtha, camphene, burning fluid, coal oils, or other easily inflammable substance within the fire limits of the city of Davenport; nor shall any of said acts be done, continued, or carried on outside of the fire limits, and within the city limits, without the prior consent of the Council, obtained as specified in section four (4) of this ordinance.

SEC. 2. No merchant, dealer, painter, or other person, company, or corporation, shall, within the fire limits of the city of Davenport, keep on hand in any store, building, cellar, or other place within said fire limits, a greater quantity of camphene, benzine, benzole, kerosene, naphtha, or other coal oils, or any easily inflammable burning fluid, than one barrel, not exceeding 45 gallons, of each at any one time, not exceeding five barrels in all; and benzine, benzole, or naphtha, kept for retail, shall be sold by daylight only, and shall be kept in a tin can or other metal vessel; *Provided*, that <sup>How much
merchants may
keep for sale.</sup> Benzine to be
kept in tin cans.

When more than one barrel may be kept.

any dealer, merchant, or other person, if he keeps none of the other oils or inflammable substances named or referred to in this ordinance, may keep five barrels of kerosene, or two barrels of benzine, or two of any other kind, not exceeding five in all, and if retailed, it shall be from tin cans or metal cases; *Provided, also*, that kerosene may be retailed by gas-light. Outside of said fire limits, no such merchant, dealer, person, company, or corporation shall keep any of said articles other than as above provided without the consent of the City Council, to be obtained as provided in Section four (4) of this ordinance.

Exception in favor of carriers

Merchant may store outside of fire limits under certain restrictions.

SEC. 3. None of the articles or substances named or referred to in Section one (1) of this ordinance, shall be kept or stored in front of any building or structure, or on any street, alley, wharf, sidewalk, or lot, for a longer time than is sufficient to receive in store or in delivering the same, provided such time shall not exceed six hours; but this ordinance shall not prevent common carriers from receiving and storing, in the usual course of business, in any building belonging to said carrier, said oils and substances for a period not exceeding five days; nor shall this ordinance prevent any merchant from storing for his own use, for the purpose of sale, in any building or structure, said oils and inflammable substances belonging to himself; *Provided*, they are so stored outside of the fire limits, *and provided*, the building or structure in which they are so stored is, and during the time of such storing, shall remain at least three hundred feet from any other building or structure; *and provided*, not more than one hundred barrels shall be therin stored at any one time.

How authority to manufacture or to store more than 100 barrels may be procured.

SEC. 4. If any person or corporation shall wish to manufacture within the city limits any of the said oils or inflammable substances named or referred to in this ordinance, or any person, merchant, dealer or corporation shall wish to store, or erect or use a building to store more than one hundred barrels of any of the said oils and

substances in any one place, or shall wish to sell or keep said substances differently from the manner herein allowed, he or they shall apply to the City Council, and state in the application what they wish to do and where they wish to manufacture, or keep, or store the same ; the Council shall then appoint a committee to examine the matter, who shall report as soon as practicable, and the Council shall then take such action in the premises as they may deem just and proper. Nothing in this section shall, until the action of the City Council is had, or authority granted, be construed to authorize the making, keeping or storing of any of said oils or substances, contrary to the prior provisions of this ordinance.

Construction of
this ordinance.

SEC. 5. Whoever violates any of the provisions of ^{Penalty.} this ordinance is guilty of a misdemeanor, and shall be fined not more than fifty dollars for each and every offense ; and every day that any of the said articles or substances are made, kept, or stored contrary to this ordinance, shall be deemed a new and distinct offense. And it is made the duty of the Marshal and Fire Wardens to see that this ordinance is observed. Any member of the fire department may make complaint of its violation, and after deducting costs, all fines recovered on the complaint of any fireman, or member of the fire department, shall go to the fire department.

SEC. 6. This ordinance shall go into effect and apply ^{When ordinance takes effect.} at the end of ten days from and after its publication in the official newspaper of the city.

Passed and approved November 7, 1866.

CHAPTER XXV.

AN ORDINANCE to authorize the use of Fifth street by the Mississippi and Missouri Railroad Company.

SECTION 1. In consideration of the performance of

Right granted.

the conditions hereinafter specified, the right and authority and permission are hereby granted to the Mississippi and Missouri Railroad Company to lay down a single track of its said road, in and through the centre of Fifth street, in the city of Davenport, with all necessary side-tracks, turn-outs, switches and turn-tables, and forever thereafter maintain and use the same for the passage of locomotives, cars and trains of cars, upon the following conditions, to be performed by said company:

Conditions.

1st. Said company shall, at its own proper cost, but under the direction of the city authorities, grade and pave or plank the entire street in such a manner as to make a complete roadway.

2d. Said company, if required by the city authorities, shall at each street which crosses said Fifth street, erect a sign over said crossing, upon which shall be painted in large letters the words "Railroad Crossing."

3d. The locomotives and trains of cars of said company may pass through said street at a rate of speed not exceeding six miles per hour, and the bell shall be kept continually ringing while such locomotive or trains are passing through such street.

4th. Nothing in this ordinance shall be so construed as to allow the said railroad company to leave their cars standing on said street, unless in case of accident or unavoidable necessity.

Passed and approved June 25, 1853.

AN ORDINANCE to amend "An Ordinance to authorize the use of Fifth street by the Mississippi and Missouri Railroad Company," passed and approved the 25th of June, 1853.

New arrangement.

SEC. 1. In consideration of the sum of fifty thousand dollars to be issued immediately to the city of Davenport, in the capital stock of the first division of the Mississippi and Missouri Railroad Company, west of Iowa City, bearing interest at the rate of ten per cent. per annum, payable in stock, the said company are

hereby released from all obligations further to pave or plank fifth street, agreeable to the provisions contained in the first condition of an ordinance to authorize the use of fifth street by the Mississippi and Missouri Railroad Company, passed and approved June 25, 1853, and the said company shall have the right and authority to lay down a second in said street whenever the business of the road shall render it necessary.

SEC. 2. The said company shall at all times keep its tracks properly balasted, and the space between them and to the end of the ties planked or macadamized at its own cost. Ballast of track, &c.

SEC. 3. The conditions of sections 2d, 3d and 4th of the said ordinance of June 25, 1853, shall remain in full force.

Provided, That the said company shall in no case so lay the track or tracks through the said street as to prevent the passage of carriages upon either side of said tracks.

Provided further, That said company shall signify its acceptance of the conditions of this ordinance at the next meeting of the City Council.

Passed and approved June 3d, 1857.

NOTE.—See *ante* pp. 79, 90.

CHAPTER XXVI.

ARTICLE 1.

AN ORDINANCE to license games of amusement in the city of Davenport.

SECTION 1. No person shall keep any billiard table, License necessary. ten-pin, nine-pin or bowling alley, bagatelle table, Jenny Lind table, or any other table, whereon others are permitted to play, and for the use of which, or privilege of playing thereon, or for the hire thereof, any money or its equivalent, or any renumeration in lieu of money,

Definition.

shall be paid or received therefor, without first having obtained a license.

SEC. 2. One road or track shall constitute a ten-pin, nine-pin, or bowling-alley* within the meaning of this ordinance, without regard to the number of pins or bowls used.

License—how obtained.

SEC. 3. Any person wishing to obtain a license to keep any of the above enumerated games, shall first pay to the City Marshal the sum of fifteen dollars for each billiard table, bagatelle table, Jenny Lind table, (or any other table whereon others are permitted to play for hire), for each ten-pin, nine-pin or bowling alley, and upon filing a certificate from the City Marshal of such payment, with the City Clerk, the Clerk shall issue a license for the keeping, number of tables or alleys paid for, which license shall continue for the term of one year.

Same.

SEC. 4. The City Marshal may receive one-half the sum specified in this ordinance for a yearly license, and upon filing his certificate thereof with the City Clerk, the Clerk shall issue a license for the table or alley so paid for, for the period of six months, (*Provided*, that such license shall not be issued prior to the first day of July in each year); and all licenses provided for in this ordinance shall end and terminate on the 31st day of December.

Clerk's fee.

SEC. 5. The Clerk shall be entitled to demand of the applicant for license under this ordinance the fee of one dollar before issuing the same for each table or alley so licensed.

Penalty.

SEC. 6. Any person violating any provision of this ordinance shall, on conviction before the Mayor or Police Magistrate, pay a fine to the city of Davenport of five dollars and costs, for every twenty-four hours he shall

* BOWLING ALLEYS.—Bowling alleys are a nuisance at common law, and Council may pass ordinance to abate them. *Tavener v. Albion*, 5 Hill, 121 S. P. 4 E. D., Smith 570, or under our charter they may be licensed, regulated and taxed.

neglect or refuse to procure a license, as required by this ordinance.

SEC. 7. All ordinances relating to the licensing games of amusement are hereby repealed.

Passed and approved November 1, 1865.

ARTICLE 2.

AN ORDINANCE to license shooting galleries in the city of Davenport.

SEC. 1. No person shall establish or keep any shooting gallery, for gain or hire, within the city without obtaining therefor a license.^{Licence required.}

SEC. 2. For such license he shall pay five dollars for fee for three months, eight dollars for six months, and fifteen dollars for one year.

SEC. 3. All the penalties and other provisions of the ordinance of November 1, 1865, entitled "an ordinance to license games of amusement in the city of Davenport," shall, so far as applicable, be deemed part of this ordinance.^{Penalty, &c.}

Passed and approved September 13th, 1866.

[NOTE.—As to power of city to license, &c., see notes to charter. *Ante* pp. 29, 64, 84, 88.

CHAPTER XXVII.

ARTICLE 1.

AN ORDINANCE for lighting the city of Davenport with gas.

SECTION 1. By this ordinance the city of Davenport grants to the Davenport Gas-light and Coke Company, until the 19th day of August, 1874, the exclusive privilege, and an equal privilege thereafter with all others, to use the streets, lanes, alleys, and public grounds of said city, including any territory that may hereafter be added to the same, for the purpose of laying down and

repairing, in said streets, lanes, alleys, and public grounds, pipes for conveying gas, for supplying said city and the inhabitants thereof with gas; *providing* that said Gas-light and Coke Company, their successors or agents, shall not, in laying down or repairing said pipes, for the purpose aforesaid, unnecessarily obstruct the passage of any street, lane, alley, or public grounds, and shall, within a reasonable time after the opening of any street, lane, alley, or public grounds, repair and put in good order and condition the same.

Conditions of
grant.

SEC. 2. The privileges herein granted are upon the express condition that said Davenport Gas-light and Coke Company shall continue to maintain their works, and extend their leading pipes, from time to time, through such localities in said city, as the consumers, or consumption of gas, may justify; and shall furnish to said city seventy-five public lamps, if so many shall be required, and to the inhabitants thereof for private use, gas at a rate not exceeding \$3.50 per thousand cubic feet, for the term of two years from the time when the company had the gas works completed, and thereafter at the rate paid by other cities, in the State of Iowa, of like population, and similarly situated as to the cost of manufacturing gas. All lamp posts, lamps, metres, and fitting for public lamps, to be furnished at the expense of the city; *provided*, that all temporary failures, on the part of said company, their successors or assigns, to perform any of the conditions exacted of them by this ordinance, when such failures are occasioned by accident, or untoward events, shall not work a forfeiture in case the same shall be repaired within a reasonable time.

Passed and approved August 19, 1854; February 7, 1855; October 1st, 1856.*

* REPEAL.—This ordinance was repealed March 31, 1858, by the following ordinance:

“SEC. 1. That the ordinance called the Gas Ordinance, be, and the same is hereby repealed.”

LAMP POSTS DEFINED—OTHER ORDINANCES REFERRED TO.—“*Public lamp*

ARTICLE 2.

AN ORDINANCE concerning Street Lamps.

SEC. 1. It shall be the duty of the Marshal of said city to take charge of all street lamps owned by or under the control of said city, and to keep the same in repair, and from time to time report the expenses thereof to the City Council.

SEC. 2. The lamps shall be lighted every night at early candle light, and shall be kept lighted in such manner and to such hour of the night as the City Council shall, by resolution, direct; *Providing*, the same shall not be lighted on clear nights. The Mayor is hereby authorized to direct the street lamps to be kept lighted to a later hour than fixed by resolution, whenever he shall deem the same expedient.

SEC. 3. Any person who shall carelessly or maliciously break, deface, or in any way injure or destroy any public lamp or lamp post of this city, shall forfeit the penalty of ten dollars for each offense, together with the expenses which may be incurred in repairing

posts, in a contract with city for lighting gas, does not necessarily imply that the posts should be owned by the city, if erected and used for the public benefit.—*Dav. Gas Co. v. Davenport*, 13 Iowa Rep., 229.

See "Index" for ordinance prohibiting posting bills upon, and also ordinance prohibiting breaking of street lamps.

SUIT WITH GAS COMPANY.—The following was the award of the arbitrators in the litigation between city and Gas Company:

THE DAVENPORT GAS-LIGHT AND COKE COMPANY }
vs. }
THE CITY OF DAVENPORT. }
AWARD.

We, the undersigned, arbitrators appointed by the agreement of submission hereto annexed, having met the parties pursuant to notice, at the office of Putnam & Rogers, in the city of Davenport, on the 24th day of January, 1865, and having heard their several allegations, proofs, arguments, and duly considered the same, do award and determine, that the above named Davenport Gas-light and Coke Company shall have and recover of the above named city of Davenport, the sum of *five thousand one hundred and seventy-six 87-100 dollars* in full for all their claims and demands set forth in the annexed agreement of submission, together with one-half of the arbitrators' fees, to-wit: the sum of *two hundred and twenty-five dollars*.

Dated at Davenport, the 20th day of February, 1865.

A. H. BENNETT,
JHN C. BILLS,
JAMES ARMSTRONG, } Arbitrators.

the injuries committed, to be recovered separately or in a suit for the penalty.

Hitching to,
&c., forbidden.

SEC. 4. Any person who shall climb upon or hitch any horse or other animal to any public lamp post, or hang or place any goods or merchandize thereon, or place any boxes, goods, wood, or any heavy material, upon or against the same, or who shall extinguish or cause to be extinguished, or light or cause to be lighted, any of said lamps, unless duly authorized so to do by the Common Council, or Mayor, or an Alderman, shall forfeit the penalty of ten dollars for each offense.

CHAPTER XXVIII.

AN ORDINANCE granting Goodrich, Wheeler & Yantis, certain privileges.

Passed and approved, August 13, 1856.

[Repealed Sept. 13th, 1866, and, therefore, not herewith re-printed.]

CHAPTER XXIX.

PART I.

*AN ORDINANCE to secure the Health of the City,
and to prevent Nuisances.**

Duty of butch-
ers.

SEC. 1. It shall not be lawful for any butcher, or other person, to kill or slaughter any beeves, sheep, calves, hogs, or other animals, within the said city, except the house, yard, pen, or place where the killing shall take place, be paved with brick or stone, and the earth below said brick or stone be made sufficiently solid to prevent its becoming the receptacle of filth and offensive matter, and unless the same be at least four

*Further as to Nuisances—see Index title “Nuisance”; also Chapter 42 *post.*

hundred feet from any dwelling. The pavement in every case, shall be made with a descent towards a gutter, which shall pass through the same, and leading to a tub, or reservoir, which shall receive the blood and offal passing therein, which shall be emptied and removed from the premises, at the end of each day when killing has been done, and the whole premises shall also be washed and cleansed at the end of each day. And further, that each slaughter house, or place occupied for the killing of animals, as aforesaid, shall be white-washed at least once in every month between the first day of March, and the first day of November of each year.

SEC. 2. It shall be the particular duty of the Marshal, of said city, to attend strictly to the enforcement of the provisions of the above section, and to see that its provisions are strictly complied with, and the Board of Health are required to inquire into the same from time to time. And the refusal, on the part of any owner, lessee, possessor, or occupant, of any such house, yard, pen, or place where such killing shall take place, as aforesaid, to permit the Marshal, Board of Health, Health Inspector, or the Mayor of the city, to enter upon and examine such premises, for the purpose of ascertaining if this ordinance be strictly complied with, shall be liable to be fined not less than five dollars, nor more than fifty dollars for such refusal and permission as aforesaid. And upon a failure, neglect, or refusal, to regulate and construct the slaughter houses, yard, pen, or place where killing shall take place, as aforesaid, according to the provisions of the foregoing section, or where there exists filth or offensive matter in said places, or their vicinity, such person thus failing, neglecting, or refusing, shall be immediately proceeded against by the Marshal, Health Inspector, or Board of Health; or the Mayor, or any Alderman, shall be authorized to proceed against such person at their own instance, and upon conviction, the guilty party shall pay a fine of not less than twenty dollars, nor more than one hundred dollars.

Duty of Marshal and Board of Health.

Penalty.

Who liable.

SEC. 3. The person, or persons, using or occupying the premises, whether as owners or lessees, shall each be considered as parties to answer this complaint, and if convicted of having, and maintaining the establishments prohibited as above, in addition to the fine already affixed, and as a further punishment, it shall be the duty of the Marshal forthwith to close the same—to keep it closed until the owner or occupant is restored to the possession thereof by due process of law.

Owners must
keep lots clean.

SEC. 4. The owner or occupant of every lot or building, or any appurtenance thereof, shall keep every part thereof free from filth, or anything offensive to the neighborhood about the same, which would be likely to contribute to disease or infection of any kind; and upon failure so to do, it is hereby made the duty of the City Marshal, or Health Inspector, upon the complaint, either verbally or in writing, of any person representing to him that fact, immediately to give notice to the owner or occupant thereof, and require him to do such acts as the Marshal shall deem necessary for the health of said city, and in case of a failure of such person to comply with such requirements for the space of twelve hours, said Marshal is required and empowered to do such acts himself, keeping a correct account of the expenses of the same, for all of which expenses said owner, or occupant, shall be liable to three times that amount, to be collected by an action in favor of the City of Davenport.

Penalty.

Officers duty.

SEC. 5. It shall be the duty of the City Marshal or Health Inspector, to see that every portion of the city, including all buildings, cellars of the same, lots and appurtenances, be properly purified and limed, and he shall immediately require the owner, or occupant, of every lot or building, whenever, in his judgment, he shall deem it necessary, to lime the same in such manner as he may direct, and upon a failure so to do for the space of twelve hours, he shall be liable to said city as prescribed in the preceding section.

Passed May 13, 1853, and June 21, 1852.

PART II.

AN ORDINANCE to secure the health of the city—providing for a Board of Health and other purposes.

Be it enacted by the City Council of the City of Davenport,

ARTICLE 1.

SECTION 1. The Mayor of the city is hereby empowered, at any and all times when he shall deem the exigencies of the case to require it, to appoint a Board of Health, to be approved by the City Council, to consist of three persons, which may be increased to five, if necessary. The Mayor shall be *ex officio* President, and the City Clerk *ex officio* Clerk of said Board. The persons so appointed may be removed by the Mayor or City Council at pleasure, and others appointed by the Mayor or by the Council. The Board may be dissolved at any time by the Mayor or the City Council, and it shall be the duty of the Mayor to dissolve it when he deems their services no longer necessary. When dissolved, if the necessity again arises, the same or a new Board may be appointed, during the same year or at any subsequent year.

SEC. 2. The Board of Health shall meet the first ^{Meeting of} time, for any one year, at the call of the Mayor, and thereafter at such times as they may designate, or at the call of the Mayor, and any member who shall absent himself (unless sick or absent from the city) from any meeting, shall be liable to be removed and his place to be filled, and he shall in addition pay to the city of Davenport a fine of five dollars. But this fine may be remitted by the Board for good cause shown. All meetings of the Board shall be at the City Hall.

SEC. 3. The Board of Health may make and determine the rules of its own proceedings and such other rules and regulations as may be necessary to carry into effect the powers and duties of the Board.

Powers and
duties.

SEC. 4. Said Board of Health shall exercise a general supervision over the city of Davenport, with full power to take all steps and use all measures to promote the cleanliness and salubrity thereof, to abate nuisances of every description, on public or private property; to prevent the introduction into the city of malignant, contagious or infectious diseases, and to remove or otherwise dispose of any person attacked by any such disease, and adopt in reference to such person any resolutions, restrictions or measures deemed advisable; and to establish rules and regulations for the government of the city hospital, and to prevent the introduction or spreading of cholera, ship fever, small-pox, or other infectious or contagious diseases within the city.

Marshal—police
duties of, &c.

SEC. 5. It shall be the duty of the Marshal, Health Inspector, and such members of the police as the Board of Health may direct, to attend the meetings of the Board of Health in the City Hall, and to serve all precepts and notices issued by said Board, or any member thereof, signed by the President and attested by the clerk thereof; to execute all orders of the Board directed to them; to attend to the abatement or removal of all nuisances, and to perform such other duties in relation to nuisances as said Board may direct; and as often, and in such manner as may be required of them, to examine the condition of all streets, lanes, avenues, alleys, market places and public squares and private yards of the city, and to report to said Board, or any member thereof, all nuisances found therein; to notify persons upon whose premises, or premises occupied by them, any nuisance may exist, to remove the same, and if it be not removed forthwith, to make a report thereof in writing to said Board, or any member thereof; to visit at least once a week, and oftener when required by said Board, or any member thereof, every part of the city; to arrest any person found violating any city ordinance which relates to the sanitary regulations of the city; and to watch for and arrest persons throwing, or permitting to be thrown, from their premises into their

yards, or into the streets and alleys, any filth or other matter prohibited by the ordinances of the city and the regulations of the Board of Health; and in other respects to exercise the utmost diligence in enforcing the ordinances in regard to their department.

SEC. 6. The Board of Health shall keep a correct ^{Account to be kept, &c.} and full account, in suitable books, of all expenses incurred, with whom, and on what account, and whether payable by the city or by individuals, and a like account of all moneys expended, to whom paid, and on what account; and shall, at the end of every month, render to the City Council an account of all expenses that may have occurred under their authority, and, upon the Board certifying to the correctness of the same, and the same being approved by the Council, the Clerk shall issue his warrant therefor, payable out of any money not otherwise appropriated.

SEC. 7. The owner or occupant of every lot, or building, or any appurtenance thereof, shall keep every part thereof free from filth or anything offensive to the neighborhood about the same, likely to contribute to disease or infection, or which is prohibited by the Board of Health; and upon failure to do so, it is hereby made the duty of the City Marshal or Health Inspector, upon complaint, inspection, or order of the Board of Health, immediately to give notice to the owner or occupant thereof, and require him to do such act as the said officer, under the direction of the Board of Health, shall deem necessary for the health of said city, and in case of failure to comply with such requirements for the space of twelve hours, said officer is required and empowered to do such acts himself, keeping a correct account of the expenses of the same, for all of which expenses said owner or occupant shall be liable to three times that amount, to be collected by an action in favor of the city of Davenport.

SEC. 8. Said Board of Health shall, from time to time, cause every slaughter house and yard of the city to be entered and examined, and a report made of any

^{Slaughter houses, &c.}

violation of ordinance in relation thereto, such report to be accompanied by a list of names of the witnesses by whom the facts contained in such report are expected to be proven.

Duty of physicians.

SEC. 9. It shall be the duty of every physician in the city to report to the Board of Health every case of ship fever, cholera or small-pox he may be called upon to attend within the limits of the city, or within five miles of the same, within twelve hours after he shall have examined the patient, with the number and location of the house, name of occupant, and street, under penalty, for failure to do so, of ten dollars fine.

Removal of sick.

SEC. 10. Whenever it shall appear to said Board of Health that any person has been attacked by cholera, ship fever, or any contagious disease, said Board shall cause such person to be removed immediately to the hospital or some other retired place; but if such person refuse to be removed, or if his or her condition is such that, in the opinion of the Board of Health, removal would be attended with danger, said Board shall take such measures as may be deemed advisable to prevent the spread of the contagion or infection, and to cause the diseased person to receive proper and humane attention.

Confinement.

SEC. 11. All persons having ship fever, small-pox, or other contagious or infectious disease, in the city, who refuse to go, or cannot be taken therefrom, to the hospital, or other house or place which may be designated by the Board of Health, are hereby required to be kept closely confined within their respective dwellings or places of abode; and the Board of Health shall cause suitable notices, with the name or character of the disease printed or written in large letters thereon, to be posted up in the most conspicuous place on or near such dwelling or place of abode in which such contagious or infectious disease exists, and require of the occupants thereof to maintain such notices there, until, in the opinion of the Board of Health, they may

Posting notice.

be safely discontinued ; and any person failing to comply with the requirements of this section shall forfeit and pay a fine of not less than ten nor more than one hundred dollars.

SEC. 12. If any person shall, without permission of small-pox, &c. the Board of Health, leave his or her place of abode and be found going about the city after the small-pox or varioloid eruption has made its appearance upon him or her, he shall forfeit and pay to the city not less than ten nor more than one hundred dollars.

SEC. 13. All persons are required to obey the ordi-^{Rules of Board.} nance, precepts, regulations and requirements of said Board ; and whoever shall fail, refuse or neglect so to do, shall forfeit and pay to the city not less than five nor more than fifty dollars.

SEC. 14. Each member of said Board shall receive compensation. as full compensation for his services two dollars for each day he shall attend the meetings thereof ; and the clerk of said Board shall keep a correct account of the days of attendance of each member thereof, and certify the amount due each, after deducting unremitting fines for non-attendance, and the City Clerk shall issue his warrant therefor, after approval by Council of the account.

Be it further enacted, That the Board of Health may, if they shall deem it expedient and proper, exercise any or all the powers conferred by Article two (2) of this ordinance ; in no case interfering with trade, commerce, navigation or other private interests any further than a due regard for the public safety and public health may require.

ARTICLE 2.

SECTION 1. All boats coming to or bound for the city of Davenport shall, if so ordered by the Board of Health, before such boat or vessel can land at the wharf, or discharge her cargo within the limits of the city, touch at the quarantine and land all emigrants or others recently from shipboard, and all sick, diseased, ^{Boats at quarantine.}

or unclean persons, with their stores and baggage; *provided*, the officers stationed at the quarantine shall so order, or it may be necessary, on account of cholera, ship fever, small-pox, or any communicable disease, among the passengers or crew of such boat, for the same to be landed, to relieve the master or person in charge of such vessel from the penalty hereinafter provided against masters or owners of all boats or vessels, who shall knowingly land, or bring into the city limits, any person or persons sick of cholera, ship fever, small-pox, or any communicable disease of a fatal or dangerous character.

Duty of boats.

SEC. 2. The master of any boat landing passengers contrary to the orders and regulations of the Board of Health, or contrary thereto getting his boat by the quarantine without detention, shall, on proof of the fact before the Police Magistrate, be fined in a sum not less than fifty nor more than one hundred dollars; and the boat may, on the order of the Board of Health, be forced to return to the quarantine station and remain any length of time not exceeding twenty days.

Physician at quarantine.

SEC. 3. The physician and assistant physician at the quarantine station shall have power to administer oaths to the masters, officers, crew, or passengers, of any steamboat touching any infringement of quarantine regulations or other matters connected with the duties of his office; and it shall be the duty of the quarantine physician to give immediate notice to the Mayor of any master of a steamboat having disregarded the provisions of this ordinance.

Permit to leave quarantine.

SEC. 4. Whenever the physician in charge of the quarantine shall be satisfied that there is no cause for the detention of any vessel touching at quarantine, or such vessel shall have landed all passengers coming under the provisions of this ordinance, or any future regulation established by ordinance, and shall have been if required, thoroughly cleansed to the satisfaction of the quarantine officer, such vessels shall receive a per-

mit to enter the city. The said officer shall also give to persons in quarantine, when satisfied that themselves are free from disease, and their baggage and effects are properly washed, cleansed and purified, a certificate to that effect, and such certificate shall authorize and permit such persons to depart from the quarantine. But the Board of Health, in cases of the prevalence of cholera or ship fever, shall have power to prevent the admission of emigrants and others peculiarly liable to such diseases, into the city.

SEC. 5. Any person placed in quarantine who shall leave the same without a certificate, as in the last section required, shall be liable to a penalty of not less than five dollars nor more than one hundred dollars, to be sued for and recovered before the Police Magistrate, as in other cases. Same—penalty.

SEC. 6. The master or person in charge of any steam-Penalty. boat or other vessel, who shall knowingly bring into the city any person or persons diseased with cholera, small-pox, ship fever, yellow fever, or any communicable disorder endangering life, or who shall land any such sick persons within five miles of the city, except at the quarantine station, shall be liable to a penalty of not more than one hundred dollars for each and every offense, no matter from what quarter the said vessel may approach the city; and the master or person in charge of any vessel coming from the south, who shall disregard the quarantine regulations, or disobey the orders of the quarantine officers, shall also be liable to a like penalty for such disregard or disobedience, in addition to the liability under the first provision of this section; and it shall be the duty of the City Marshal or Health Inspector, whenever complaint is made before the Police Magistrate of a violation of any of the provisions of said ordinance, to arrest the offender forthwith and bring him without delay before the Police Magistrate for trial.

SEC. 7. Whenever the Mayor shall be informed and

Duty of Mayor, &c. satisfied that, contrary to the orders and regulations of the Board of Health, any steamboat or vessel has left the quarantine station without a permit, or has failed to stop at the same, or that any vessel having on board cholera, ship fever, small-pox, or any communicable disease of a fatal and dangerous character, has failed to land at the quarantine and give notice thereof, and further failed to obey the instructions of the Mayor, or Board of Health, or quarantine officers, in regard to said diseased persons, or the boat bringing the same, it shall be the duty of the Mayor, if in his opinion the health of the city requires it, to proceed at the head of the police of Davenport, to such boat or vessel, to take her, and cause the boat, together with the crew and all the passengers on board, to be conveyed to the quarantine station, there to remain until discharged by the proper authorities; and all expenses incurred in such removal shall be paid by such boat or vessel; and any person aiding or abetting the master or person in charge of said vessel, in violation to the quarantine regulations, shall, on conviction thereof, forfeit and pay to the city of Davenport a sum not less than fifty nor more than one hundred dollars.

Expenses.

SEC. 8. When practicable, all expenses of removal of sick persons from boats to the hospital, or expenses incurred in cleansing or purifying, or furnishing medicines to those placed in quarantine, shall be defrayed by such persons themselves; in all other cases the expenses shall be paid by the city.

Emigrants, &c. at quarantine. SEC. 9. The section of this ordinance which requires all emigrants or other persons lately from shipboard, to be landed at the quarantine station, whether sick or otherwise, until their persons, baggage and effects shall have undergone the required cleansing and purification, shall only be considered in force when and so long as the same may be deemed necessary by the Board of Health, on account of the prevalence of cholera or ship fever at New Orleans, or on board of emigrant vessels arriv-

ing at that port, or the prevalence of either of said diseases in the city of St. Louis; and it shall be the duty of the Mayor to give notice, by proclamation, whenever the Board of Health shall consider it necessary to enforce said section, and to send said proclamation containing the purport of the regulations established to Muscatine, Burlington, Keokuk, Quincy and St. Louis, that all parties interested may have due notice thereof.

SEC. 10. The Board of Health and the officers in charge of the quarantine shall have power to make such regulations for the proper conducting and management thereof as may be found necessary; and all persons in quarantine, and the officers and agents of the city employed in that service, shall observe the same; said officers and agents under the penalty of summary dismissal by the Mayor, when recommended by the Board of Health, for any neglect of duty; and persons in quarantine, under a penalty of not less than five dollars nor more than one hundred dollars, on proof before the Police Magistrate of infringement of such regulations, when informed of the existence thereof.

SEC. 11. It shall be the duty of the quarantine physician or assistant physician to collect from every steam-boat or other vessel examined at the station, the sum of two dollars, before giving a certificate or permit to such vessel to enter the city; and one-half the sums so collected shall be paid over to the City Treasurer monthly, *provided*, however, that regular packets to this port shall pay but one dollar.

SEC. 12. In addition to the foregoing powers the *Health officers*, Board of Health, or the Council, or the Mayor are hereby empowered to appoint one or more health officers, removable by the Board or City Council, who shall have the power to board every boat arriving at the levee of said city, before it shall have discharged its freight or passengers, and to inspect and examine all freight and passengers proposed to be landed at this place, and only such portions of the same shall be

landed within the limits of the city as he or they shall allow, and the remainder to be landed at such point as the health officer shall direct. When ordered to do so by the Board of Health, or the Council, or the Mayor, the officers so appointed shall exercise the powers conferred in this section.

Power over
boats.

SEC. 13. In case the Board of Health shall not establish any quarantine, or if boats shall pass quarantine without inspection and permit, and in all cases when required by the Mayor, or the Board of Health, or other health officer, every boat arriving at the wharf, or within the limits of said city, shall neither receive on board or discharge any freight or passengers, or permit any person not a passenger to go on board for any purpose whatever, until the health officer, or other named officers, shall have given his or their permission; that upon the boarding of the boat by such officers, the officers of said boat shall furnish to said city officer, or officers, all information relative to passengers or freight proposed to be landed here, as may lay in their power, and in case said boat shall fail to comply in any particular with any provisions of this or of the last section of this ordinance, or fail to obey any of the reasonable requirements of the health officer, or officers, in the due execution or performance of their duties, it shall pay to said city a fine of not less than ten dollars, nor more than one hundred dollars, for each and every offense, to be recovered of said boat by action instituted in the name of the city of Davenport.

Sick to be cared
for, &c.

SEC. 14. It shall be the duty of the Board of Health, in the case of persons thus landed by their direction without the city limits, to provide for them places in which to stop; to see that such of the sick, whose condition requires it, have attendants and necessaries; and when such attendants and necessaries have been provided at the expense of the city, the person, or persons, for whom the same have been provided, shall be liable to said city for the amount thus expended, and the

Board of Health may collect the same from such persons, or their heirs, executors, administrators, or assigns, by action instituted against them in the name of the city of Davenport. Persons either carried or landed out of the city, by the Board of Health, shall stay within its limits until the Board of Health shall give them permission to enter and remain in said city; and any person so going into, or remaining in the city, without such permission, or any person who takes another, or others, into said city, without such permission, shall pay a fine to said city of Davenport not exceeding \$100. The Board of Health, in all cases, when, in their judgment, the health of the city demands it, may cause any person, taken sick within the limits of said city, with a disease which is infectious, contagious, or dangerous to community, to be removed to a suitable place, where danger to the inhabitants of the city will be prevented.

SEC. 15. The city has a remedy over and against any and all persons for all expenses incurred in their behalf, and for all supplies and aid furnished to them. ^{Remedy of city.}

SEC. 16. If the Board of health shall at any time establish a quarantine, the physician and necessary officers, as well as those for hospitals, shall be appointed and their compensation fixed by the Board of Health, subject, however, to the approval of the City Council, which may reduce or increase the compensation as it deems proper.* ^{Officers—compensation.}

Passed and approved August 8th, 1866.

* QUARANTINE.—As to quarantine power of cities, see 41 Maine, 363; 45 id., 496; also city charter, Art. 5, Sec. 2; *ante*, p. 38.

BOARD OF HEALTH—ORDERS OF.—Regularly, the orders of the Board of Health should be in writing. See 15 Wend., 397; 18 id., 169; 9 Wend., 333; 6 id., 651.

POWER OF CITY.—Charter gives city full power to secure the public health.—See *ante*, p. 38.

PART III.

*AN ORDINANCE to secure the better preservation of
the health of the city.*

Occupant to
clean out paved
and macada-
mized gutters.

Penalty for
violation.

SECTION 1. Every occupant of any lot or lots, in front of or adjoining which there is any paved or macadamized gutter, is hereby required, once every two weeks, between the first day of April and November of each year, thoroughly to clean out the said gutter in front of or adjoining the property occupied by him, and place the dirt and matter thus cleaned out into a pile, so that it can be removed by the carts or other vehicles provided by the city, and said cleaning out shall be done on or before Friday of every second week, so that it can be removed on Saturday; and any person who shall fail or neglect to comply with this ordinance shall be guilty of a misdemeanor, and fined not exceeding ten dollars for each and every offense; and if the city authorities are compelled to clean out said gutters, the officer shall keep an account of the expenses for three times the amount of which the party shall be liable (in addition to the fine above provided for) in an action by the city. If, in the gutters running north and south, sand or other materials are washed into the gutters from above by the action of the flowing water from the bluff, it shall be the duty of the city, and not the adjoining occupant, to clean out such sand and other materials.

How slops,
garbage, &c.,
are to be dis-
posed of.

SEC. 2. Within the limits specified in the first section of an ordinance entitled "An ordinance to prevent swine from being kept in certain parts of the city, and to regulate the mode of keeping the same in other parts of the city, and for other purposes," passed September 24, 1866, it shall be the duty of each head of a family, between the first day of April and November of each year, to put all slops, dirt, garbage, offal, filth, refuse vegetables, dish water, and all other matters liable to decay, into a water tight barrel, cask or other vessel, and to place the same, once a week or oftener,

if required by the Marshal, Health officer, or Board of Health, at some convenient place, so that the same may be removed by the carts or other vehicles of the city, and whoever fails to comply with this requirement is guilty of a misdemeanor, and shall be punished accordingly. This section does not apply to those having drainage into the sewers on Main and Iowa streets, and shall not apply to those who may be allowed by the City Marshal, or Health Inspector, to bury or dispose of the garbage on their premises.

SEC. 3. All persons living within the limits specified in the last section are from this date hereby prohibited from depositing or throwing any manure of any kind into the alleys or streets, or upon the sidewalks, or upon their own premises; all such manure shall be thrown or deposited in a tight box or vessel, and unless removed by the owner from the city, it shall be placed by him as often as may be required, and as may be required by the Marshal, or Health officer, or Board of Health, in some convenient place where it may be removed by the city authorities, if the city shall decide to remove the same; but unless the city does undertake to remove the same, it shall be the duty of the party himself to remove it once every week, or as soon as the box is filled, and any person guilty of violating this section shall be punished and proceeded against as for a misdemeanor, and as being guilty of causing and continuing a nuisance.

This section is not intended to prevent the manuring of the land of gardens in the usual manner, provided the manure be thoroughly mixed with dirt, and is so done as to cause no stench or smells to arise. And this section does not allow manure to be deposited in alleys after November, contrary to existing ordinances. The box or other vessel into which manure is deposited or thrown shall not exceed three in width, six in length and four in height, and it shall not in any case be so placed as to obstruct the passage of the alley, and the party shall conform to the requirements of the Health

Meaning of this
section explained.

Inspector, Marshal or other health officer of the city, in the placing of the box or vessel and in the removing of the manure.

Office of Health Inspector created.

Bond, oath, duties, &c.

Powers.

Complaint book.

Has all the power of Marshal, &c.

Appointment of.

SEC. 4. At the first regular meeting of the City Council after the first Saturday in April, 1867, and annually thereafter, the City Council shall, on the nomination of the Mayor, confirm an officer to be known as Health Inspector of the city, who shall hold his office until the first day of November thereafter, unless the Council shall otherwise direct; he shall take an oath of office, and give a bond in the penal sum of \$1,000, faithfully to perform his duties. He shall have power and it is made his duty to examine into the sanitary condition of the whole city, to cause every street and alley and every private yard, cellar, cistern and well, privy and stable to be thoroughly cleaned out, and all nuisances and causes of disease to be removed. This examination and cleaning out shall be done as often as necessary to keep the city clean. He shall have power to enforce all the health, and all other ordinances of the city relating to the health of the city. He shall keep a "Complaint Book," and shall cause an examination to be made of every complaint relating to nuisances or other matters affecting the health of the city. Within the scope of his powers and duties, he shall have all the powers and authority of the City Marshal. If there shall be a Board of Health in existence, he shall co-operate with them. If not, he shall act under the direction of the Council, and shall have the power to do, and to require to be done, all acts necessary to preserve the health of the city. And all citizens and other persons in the city are directed to obey all his lawful orders respecting the abatement and removal of nuisances.

SEC. 5. The Mayor is authorized and required immediately to appoint, subject to confirmation by the City Council, a suitable person to act as Health Inspector, and who shall hold his office until his successor is appointed and qualified, or until he is removed, which

he may be at the pleasure of the City Council; and the person thus appointed shall at once, upon qualifying as required, enter upon the performance of the duties enjoined and prescribed by this ordinance. And the Health Inspector shall hereafter, and while this ordinance continues in force, be appointed by the Mayor, and confirmed by the Council, at the time other city officers are appointed and confirmed or elected by the Council.

SEC. 6. The compensation of the Health Inspector Compensation. shall be the sum of seventy-five dollars per month, during such time as the Council shall deem it necessary to continue him in office. He is removable at all times at the pleasure of the Council.*

Passed and approved September 25, 1866.

PART IV.

AN ORDINANCE to prevent the spread of infectious or contagious diseases, and to preserve the health of the city.

SECTION 1. All beds, bedding and other clothing which have been used by any person when sick with cholera or small-pox, are declared to be nuisances liable to endanger the public health, and the City Marshal, the Board of Health, or any member of it, or any health officer, or Health Inspector, or member of the City Council, or Mayor, has the power, and it is made his duty, to cause said beds, bedding or clothing to be burned or otherwise destroyed or disinfected, as hereinafter directed; and whoever interferes with or ob-

Beds, &c., of
cholera and
small-pox
patients—how
disposed of, &c.

*The office of "Health Inspector" was created in view of the fact that the Marshal's time is largely taken up with his general duties, and in view of the further fact that it is not contemplated that a Board of Health will be organized unless in case of actual or threatened epidemics.

The Health Inspector, as regards all matters pertaining to the health and sanitary condition of the city, has all the powers given by any ordinance to the Marshal, whether the Health Inspector be therein specially named or not. The Marshal is still a health officer as before, and his powers in this respect remain.

structs any of said officers in the discharge of this duty, is guilty of a misdemeanor, and shall be fined not less than five nor more than one hundred dollars for each offense.

Same.

SEC. 2. All such beds, bedding and clothing which have received any portion of the discharges of cholera patients, shall be burned or otherwise destroyed. If these articles have not been saturated with or received any of the discharges of cholera patients, such articles need not be destroyed by such officers, if they are under the direction of the city officer, or health officer, properly disinfected. And bedding and clothes used by small-pox patients, shall be destroyed or disinfected, as may be directed or deemed best by the City Marshal or other officer named in section one of this ordinance.

Provision for
destitute per-
sons.

SEC. 3. If the articles destroyed shall leave the person without other bedding or clothes, and without the means to obtain them, the city officer shall have the power to procure other articles, so far as necessary for the comfort and health of the party, provided the Mayor shall so direct, but not otherwise.

Passed and approved September 19, 1866.

CHAPTER XXX.

*AN ORDINANCE to provide for taxing, licensing and regulating Hawkers and Peddlars.**

License neces-
sary.

SECTION 1. No hawker or pedlar of any article of merchandise or of traffic usually kept for sale by any merchant or manufacturer of this city, shall be permitted to sell any such article of merchandise or traffic at wholesale or retail, or offer the same for sale within this city, without first having obtained a license therefor as hereinafter provided.

SEC. 2. The Clerk is authorized to issue licenses to

* Charter gives power to tax, license and regulate. *Ante*, p. 39.

hawkers and pedlars upon a receipt from the City ^{License fee.} Treasurer being produced to him for the sum of ten dollars therefor, which license shall authorize said hawker or pedlar to sell within the city limits for the term of one month, but no such license will authorize sales to be made except by the person to whom it was issued. For issuing such license the Clerk shall be entitled to a fee of one dollar, to be paid by the hawker or pedlar.

SEC. 3. Any person who shall violate any provision ^{Penalty.} of this ordinance shall be liable to a fine of fifteen dollars for each and every offense.

Passed and approved December 4, 1851; August 4, 1858.

[By resolutions of City Council passed December 15, 1864, the Marshal ~~was~~ instructed to enforce this chapter. The legal questions arising were referred to the City Clerk and the Committee on Licenses, with power to reduce the license in particular cases, if deemed advisable—such reduction, and the reasons, to be reported at the next regular meeting of the Council. And the same resolutions also applied to licenses of performances.]

CHAPTER XXXI.

AN ORDINANCE to prohibit horses from running at large in the city of Davenport.

SECTION 1. No horse, mare or mule, above the age ^{Restrained.} of six months, shall be permitted to run at large in the city of Davenport.

SEC. 2. It shall be the duty of the Marshal to take ^{Duty of Mar-}_{shal.} into his possession all such horses, mares and mules above the age aforesaid, that shall be found running at large in the streets, alleys or open lots in said city ; and if he shall know the owner thereof, and said owner shall live within the city, or within one mile thereof, he shall give him notice that he has such animal in his possession, and shall deliver the same to said owner upon his paying the charges as hereinafter specified.

SEC. 3. When the owner thereof shall neglect or ^{same.}

refuse to pay the charges, or shall not be known to said Marshal, he shall, within five days after the taking up, advertise in one of the newspapers of this city, that he will sell said animal at public sale, at a time and place therein mentioned (which shall not be less than five days from such publication,) and if no owner appears and pays the charges before the day of sale, he shall sell said animal at public sale, and pay the proceeds thereof, after deducting the charges thereon, into the City Treasury, which money shall be there retained for the owner of said horse, mare or mule.

Fees.

SEC. 4. The Marshal shall be allowed the following fees under this ordinance: For taking up each horse, mare or mule, the sum of fifty cents; for giving notice to the owner, fifty cents; for feed and keeping per day fifty cents; for advertising (in addition to printer's fee,) twenty-five cents, and for selling each horse, mare or mule, the sum of fifty cents.

*Owner, agent,
&c., made
liable.*

SEC. 5. If the owner, or his servant, or agent, or if any other person having control over, or charge of any of the animals mentioned in section one, shall permit the same to run at large, contrary to the provisions of this ordinance, he shall also be fined in the sum of five dollars for the first offense, and ten dollars for the second, and twenty-five dollars for the third, and shall also be liable for any and all damages to persons or property done by said animal when so at large.

Passed and approved Dec. 4, 1851, except 5th section, which was passed and approved Sept. 13, 1866.

[NOTE.—This ordinance is clearly authorized by the specific and general powers conferred upon Council. *Ante*, pp. 38, 40.

CHAPTER XXXII.

AN ORDINANCE to prevent obstructions to the landing in front of the city, and to prohibit the removal of gravel or earth therefrom.

[This ordinance is incorporated in Chapter 84.]

CHAPTER XXXIII.

*AN ORDINANCE for the relief of Antoine Le Claire
and George L. Davenport.*

[Grants to the parties named, and assigns, use of a portion of the public landing, in front of block 6, for 15 years, from November 9, 1850, for a certain rent. The time having expired, the ordinance is not reprinted herein.]

CHAPTER XXXIV.

AN ORDINANCE providing for the inspection and measurement of lumber.

SECTION 1. All lumber or timber, sold or purchased, to be used in the city of Davenport, shall be properly inspected and measured by the person appointed by the City Council for that purpose, if either party should require it, and a certificate thereof given, which inspection and measurement shall be according to the judgment of the person so appointed.

SEC. 2. Any person who shall, for the purpose of cheating, wronging or defrauding another, exhibit or use a certificate of measurement, by making the same applicable to any greater or less quantity of lumber or timber than that for which the same was given, shall pay a fine not exceeding five dollars for every such offense.

SEC. 3. There shall be allowed for services under the provisions of this ordinance, the following fees, one-half of which is to be paid by each of the contracting parties, to-wit: for the inspection and measurement of lumber, twenty-five cents per thousand for the first twenty-five thousand feet, and twelve and a half cents for every thousand feet over; for the inspection and measurement of timber, fifty cents for one hour or less, includ-

ing the time occupied in going to the place where the same is deposited, and twenty-five cents for each succeeding hour.

Passed and approved May 9, 1853.

[NOTE.—See chapter 10 for provisions in relation to wood measurers. Inspecting power given by charter. *Ante*, pp. 39, 40.

CHAPTER XXXV.

AN ORDINANCE for raising a loan of fifty-nine thousand dollars.

Preamble.

Objects enumerated.

SEC. 1. Whereas, the city of Davenport is without a fire engine, without a suitable public steamboat landing, without grounds for a reservoir and water-works, and without the requisite number of lamps for lighting the city with gas, all of which are absolutely essential to the welfare of the city; and, whereas, it is deemed expedient that twenty thousand dollars should be expended for reservoir and water-works, ten thousand dollars for fire engines, apparatus and appendages, four thousand dollars for subscribing for stock in the Davenport Gas Company, and twenty-five thousand dollars for grading, improving and paving, or macadamizing the levee, so as to make a good steamboat landing; amounting in the whole to fifty-nine thousand dollars, which amount, if appropriated, will have to be raised by a loan.

Be it therefore resolved, that on the first Monday in August, a poll shall be opened at the Court House, in the city of Davenport, for the submission of the question to the voters of said city, and that the same shall continue open from 9 o'clock A. M. until 6 o'clock P. M., and the question shall be voted for in the following manner, to-wit: all those in favor of the loan shall vote “for the loan of fifty-nine thousand dollars,” and all those opposed thereto, shall cast a vote “against the loan of fifty-nine thousand dollars;” therefore be it

Resolved, That if said loan shall carry, the bonds of

the city in the sums of five hundred dollars each, shall be issued and signed by the Mayor, or Clerk of the city, the principal payable at the end of twenty years, and the interest half yearly, not exceeding ten per centum per annum; *Provided, however,* that the bonds shall in no event be sold for less than their par value.

And whereas, said election was held on the first Monday in August, and at the time and place aforesaid, and by the returns of said election, it appears that there were six hundred and twenty-eight votes cast for the loan of fifty-nine thousand dollars, and two hundred and sixteen votes cast against said loan, being a majority of four hundred and sixty-two votes in favor of said loan, therefore

Be it enacted by the City Council of the city of Davenport—

SEC. 1. That the bonds of the city, in sums of five hundred dollars each, for the sum of fifty-nine thousand dollars, be issued, and signed by the Mayor and Clerk of the city, and sealed with the seal of said city, and payable at the end of twenty years, and the interest not exceeding ten per centum per annum, (for which coupons shall be issued,) payable half yearly, and sold in accordance with the provisions of said resolutions.

SEC. 2. The faith of the city of Davenport is hereby pledged for the payment of said principal and interest so borrowed, and the City Council shall provide for the payment of the semi-annual payment of interest upon said bonds, and the ultimate payment of the principal, when the same can not be paid out of the ordinary revenue of said city, by levying a special tax for that purpose upon the taxable property of said city.

Passed and approved August 11, 1856.

[NOTE.—As to power of city to borrow money, see charter and notes, *ante*, pp. 41, 42.

CHAPTER XXXVI.

AN ORDINANCE to establish two Market Houses in the city of Davenport, and for the erection of buildings for that purpose.

Lower market house.

SECTION 1. George L. Davenport, Gilbert C. R. Mitchell, Louis A. Macklot, F. Baurose, H. B. Hoffman, and their associates and assigns, are hereby authorized and empowered, for the consideration of the sum of ten dollars per annum, to be paid into the City Treasury, by said Davenport and his associates, and for the convenience and benefit of said city, to erect and put up a building in said city, to be denominated a "Market House," on Western Avenue, between Fourth and Fifth streets, for the purpose of renting, leasing and hiring the stalls, rooms, bunks, and other conveniences therein for hire, to such person or persons as they, the said Davenport and his associates may deem advisable and proper to be used, for the purpose of disposing of fresh meats, vegetables, fish, poultry and provisions, and fruits generally, as is customary and proper in public market houses, on all days of week, Sundays excepted.

Upper market house.

SEC. 2. And there is also hereby granted to Antoine Le Claire, upon the same consideration the right to erect build and put a Market House in operation on block No. seventy-one (71) in said city, for the same purposes and with the same rights as to renting, leasing, etc., and to be used for the same purposes as in the grant to George L. Davenport and others, in this chapter contained, to be used by the said Antoine Le Claire, and his heirs and assigns, on all days of the week, Sundays excepted.

Exclusive privilege.

SEC. 3. Said Davenport, his associates and assigns, and said Le Claire, and his heirs and assigns, so long as their respective rights to said market houses shall continue by virtue of this ordinance, shall be protected in the exclusive privilege, said city agreeing that no other market houses shall be established in said city, and also

agree to pass such ordinance or ordinances as will protect them from competition in having fresh meats, poultry, fish and vegetables sold in any other places than in the said market houses; that they will regulate the hours of marketing, dictate the mode and manner of conducting the same, appoint suitable and proper officers to preserve order, and see that the ordinances in relation to markets are complied with, and will authorize the said Davenport and his associates, and the said Antoine Le Claire, to rent their stalls, rooms, and conveniences of their said buildings comfortable thereto, and will compel citizens, and others, exposing marketing for sale, to comply with all such ordinances, and to sell and dispose of their marketing at said markets.

SEC. 4. It is, however, provided that if the said George L. Davenport, his associates and their assigns, and the said Antoine Le Claire and his heirs or assigns, shall keep up said market houses, and shall comply with all ordinances of the city in relation to markets and market houses, not inconsistent with this ordinance, then the rights and privileges hereby granted shall accrue, continue, and inure to the said parties respectively, for the term of ten years from the date thereof. If said Antoine Le Claire, or his heirs or assigns shall, at any time within the term of said ten years, discontinue the use of said building as a market house, the said city shall have the right to grant the same privileges as to market, as are hereby granted to the said Antoine Le Claire, to any other person or persons, or to build and rent a market house, to hold markets in on the days hereby allotted to said Le Claire. At any time after the expiration of said ten years, the city of Davenport shall have the right to take said market house so to be erected by the said George L. Davenport and his associates, into the ownership and control of said city, by paying the then owners thereof the cash value, at that time, of the improvements, and until the city shall be disposed to do so, the leasing, renting, and privileges herein granted to said Davenport and his

associates continue and remain in them and their assigns.

Right of city to
buy, &c.

At any time after the expiration of said term of ten years, (provided the said Le Claire shall so long continue to claim and use the right hereby granted) the said city may and shall have the right to take the said market house, and so much of the ground appertaining thereto as may be necessary for market purposes, at the then cash value of the ground, and market house so taken, and until the said city shall so take said ground and market house and pay for the same, all the rights and privileges granted to the said Antoine Le Claire, shall remain, and continue, and inure to the said Le Claire and his heirs and assigns.

SEC. 5. The said Davenport and his associates shall occupy, for the purposes aforesaid, the centre of said avenue, forty feet wide and three hundred and twenty feet long.

Passed and approved October 18, 1854.

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*AN ORDINANCE to repeal an ordinance relating to
Markets, Marketing, etc.*

SECTION 1. *Be it enacted by the City Council of the city of Davenport,* that the ordinance entitled "An ordinance regulating Markets, Marketing, etc.,," and an ordinance relating to the sale, or exposing for sale, of any hay, coal, vegetables, meat or other articles of merchandise, in any wagon or other vehicle, passed and approved December 2, 1857, be and the same are hereby repealed.

SEC. 2. That all of the ordinance entitled "An ordinance to establish two Market Houses in the city of Davenport, and for the erection of buildings for that purpose," in relation to George L. Davenport, Gilbert C. R. Mitchell, Louis A. Macklot, F. Baurose, H. B.

Hoffman, and their associates and assigns, be and is hereby repealed.

Passed and approved May 24, 1860.*

CHAPTER XXXVII.

AN ORDINANCE for the continuation of Main street, in the city of Davenport, to the northern limits of said city.

SECTION 1. Main street, in the city of Davenport, is ^{Extended.} hereby extended and continued from its present termination, north to the northern line of the present corporate limits of the city.

SEC. 2. Said street, in all portions thereof heretofore ^{width.} established, where the same shall be less than eighty (80) feet in width, is hereby established at eighty feet in width, and the width of that portion of said street, which is by this ordinance extended and continued, shall be of the same width.

* Though the market ordinance is thus repealed it has been re-printed in order that the decisions of the courts respecting it might be noted. It is quite probable that the subject of markets will often arise in the course of the history of the city.

Those decisions are in substance thus:

Under this ordinance the Supreme Court decided in the *City of Davenport v. Kelly*, (7 Iowa Rep., 102,) that the city under its charter power to establish markets, &c., had the power to prohibit the exposing and offering for sale meat at other places than those designated by the Council. It was held that such an ordinance was a reasonable regulation, not at an unreasonable restraint of trade. But in the Kelly case it was further decided that the city could not *delegate* to the private parties named the powers contained in this ordinance; but this point in the decision was subsequently overruled in *Le Claire v. City of Davenport*, (13 Iowa Rep., 210,) where it was held that this ordinance was valid, and that the city had power to authorize the erection of the market houses by private individuals and covenant to protect the owner in the exclusive privilege thereof; and that the city would be liable for failing to protect him by the passage of the requisite ordinances.

This point in the decision, it may be suggested, admits of some doubt, on this principle, that cities are disabled from making binding contracts with reference to the future exercise of their legislative powers, or valid contracts abdicating their legislative powers and functions.

As to market ordinances see *Dubuque v. Miller*, 11 Iowa Rep., 583. Also cases cited in Notes to Charter, *ante*, pp. 62, 80.

Of what a municipal market consists, see *Cincinnati v. Buckingham*, 10 Ohio R., 257.

Same.

Survey.

SEC. 3. The east and west boundary of that portion of said street hereby widened, and that portion hereby extended, shall be formed by continuing in a straight line north,, the east and west line of said Main street, from the south side of Sixth street to the north line of the corporation. And it shall be the duty of the City Engineer of said city, forthwith to survey said street, as herein provided for widening and extending the same, and to make a proper plat of such survey, showing the names of parties owning the land proposed to be taken, when known, and also a description of the lots and land by numbers, and return such plat to the Mayor of said city.

[Sec. 4 relates to the mode of assessing damages, which mode has since been changed by the amended charter of 1857, and therefore section 4 of this ordinance is not reprinted.]

SEC. 5. The Street Commissioner of said city shall thereupon cause said street to be improved and worked as other streets are worked and improved, and all the laws and ordinances of said city shall thereafter extend over and apply to said street, wherever the same shall be applicable.

Passed and approved May 9, 1855.

CHAPTER XXXVIII.

*AN ORDINANCE concerning misdemeanors.**

Unlawful as-
semblies, &c.

SECTION 1. Any three or more persons who shall assemble together in the city of Davenport, with an intent to do any unlawful act against the public peace, and to the terror of the people, or to do any act against the peace, security or repose of any person or persons, or of the people within said city, or being lawfully

*Charter gives city power to make all necessary and proper ordinances (*ante*, p. 40,) and to punish violations by imprisonment. *Ante*, p. 52.

assembled, shall agree with each other to do any unlawful act, as aforesaid, and shall make any movements or preparations therefor, or being so lawfully assembled, shall, without any agreement by words or signs, make any preparations or movements to do any unlawful act as aforesaid, shall be deemed guilty of a misdemeanor.

SEC. 2. Every person who shall unlawfully disturb the public quiet of any street, alley, avenue, public square, market place, wharf, or any religious or other public assembly; or building, public or private, or any neighborhood, private family, or person, within the city, by loud or unusual noise, by blowing horns or other instruments, by the rattling or playing of organs, kettles, bells, or other sounding vessels, or noisy instruments, by hallooing, shouting, bellowing, or howling, by indecent or obscene language or conversation, or by any device or means whatever, or by tumultuous or offensive language or conduct, by threatening, quarreling, challenging, assaulting, striking, or fighting, under any pretence whatever, shall be guilty of a misdemeanor.

SEC. 3. Every person in this city who shall suffer or permit any hallooing, howling, screaming, bellowing, profane or obscene language, fighting or quarreling, or any unusual noise or affray, in any house, upon any premises, owned, occupied or possessed by him, or over which he has control, as agent or otherwise, in such manner as to disturb the neighborhood, or persons passing in the streets, shall be deemed guilty of a misdemeanor, and the proof of such acts having been done in such place, shall be *prima facie* evidence that the same was done with the permission of the owner, occupant or possessor, but such presumption may be rebutted by proof.

SEC. 4. Any person who shall lead, drive or ride, or shall place any horse, or any beast of burthen, or drive or place any wagon or other vehicle, on any paved or planked sidewalk, or leave the same standing on or

Disturbances of
public peace.

same.

Horses, &c., on
sidewalk.

across any footway crossing any street in the city, shall be deemed guilty of a misdemeanor. This section, however, shall not be construed so as to prevent any person from leading, riding or driving over any paved or planked sidewalk, in any lot or house owned by him, or his employer, provided he does so in a walk.

Indecent behavior.

SEC. 5. Any person who shall appear in the streets, or publicly within the city when naked, or in a dress not belonging to their sex, or in any indecent or lewd dress, or shall be guilty of any indecent behavior or lewd act, or shall exhibit any indecent or lewd book, picture, statue or other thing, or who shall exhibit or perform any immoral or lewd play, or other representation, shall be guilty of a misdemeanor.

Careless driving.

SEC. 6. Every person who shall ride or drive any horse or other animal, or shall drive any carriage, mail stage, or other vehicle, or direct, order, or allow his driver to do the same, in or upon any street, alley, or wharf within the city, in a careless or improper manner, so as to cause any such animal or vehicle to come in collision with any person or child, or any vehicle or other thing, whereby any injury shall result to any person, child, or thing, shall be deemed guilty of a misdemeanor.

Drunken persons on streets, &c.

SEC. 7. Every person found drunk or intoxicated in any street, or other public place within the city, or found asleep in any such place, or on any private property not his own, nor belonging to the person with whom he lives, and being unable to show the permission of the owner or occupant, shall be deemed guilty of a misdemeanor, and it shall be the duty of the City Marshal to arrest any person so found drunk or intoxicated, and take such person forthwith before the Mayor of the city, and it shall be the duty of the Mayor, on being satisfied that such person has been guilty of such misdemeanor, forthwith to commit the offender to prison, there to remain until he becomes sober. Every person violating section

seven shall be fined not exceeding ten dollars or committed to prison not exceeding thirty days.*

[Sec. 8 was repealed September 13, 1866, and is therefore not re-printed.]

SEC. 9. No person shall be permitted to keep within ^{Stallions and jacks.} the corporate limits of the city, to let to mares, any stallion or jack, unless said person shall provide an enclosure so arranged as to obstruct the view of all the inhabitants of the city.

SEC. 10. No engineer or other person having charge ^{Railroad speed limited.} of any engine or locomotive, whether the same be attached to a train of cars, or otherwise, shall run such engine or locomotive, or permit the same to be run through Fifth street in this city, between the depot grounds of the Mississippi & Missouri Railroad Company and the west line of the corporation, at a faster speed than at the rate of six miles per hour, and while such engine or locomotive is in motion, the bell shall be kept continually ringing; and any person violating either provision of this section, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not exceeding twenty dollars for each offense.†

SEC. 11. All persons who shall violate any provision ^{Penalty.} of this ordinance, shall be deemed guilty of a misdemeanor, and upon conviction thereof (where the penalty is not already heretofore specified) shall forfeit and pay a fine to the city of Davenport of not less than three dollars, nor more than one hundred dollars, and be imprisoned until such fine and the costs of prosecution be paid; *Provided, however,* such imprisonment shall not exceed thirty days. (See Chap. 41, Art. 2.)

Passed and approved May 11, 1853.

*The last sentence of section 7 passed September 18, 1866.

† See post for another ordinance regulating rate of speed, &c., of cars in city.

CHAPTER XXXIX.

AN ORDINANCE for the extension of Twelfth street.

Extension.

SECTION 1. Twelfth street, in the city of Davenport, as laid out and recorded by Antoine Le Claire, is hereby extended from its western termination on Perry street, westerly to Brady street, and sixty feet in width.

Survey.

SEC. 2. It shall be the duty of the City Engineer of said city, forthwith to survey said extension of Twelfth street as above specified, and to make a proper plat of such survey, showing the names of the parties owning the land proposed to be taken, and return such plat to the Mayor of said city.

[Sec. 3 relates to mode of assessing damages under original charter, which mode is superceded by the amended charter of 1857, and provides that the damages shall be paid by the petitioners for the extension of the street.]

Opening.

SEC. 4. The Street Commissioner of said city shall, thereupon, cause said street to be immediately opened and improved as other streets are worked and improved, and all laws and ordinances of said city, applicable, shall apply to said street so extended.

Passed and approved June 4, 1855.

CHAPTER XL.

AN ORDINANCE for the continuation of Perry street in the city of Davenport, to the road on the north side of Block No. 1, McIntosh's addition to said city.

Extension de-
fined.

SECTION 1. Perry street, in the city of Davenport, is hereby extended and continued from its present termination, north to the road running east and west in front of the present residence of Franklin Fearing and Adam

Noel, and to the northern line of Block No. 1, of McIntosh's addition to the city of Davenport.

SEC. 2. Said street, in all portions thereof heretofore ^{width.} established, that shall be less than eighty (80) feet in width, is hereby widened and established at eighty (80) feet in width, and the width of that portion of said street which is, by this ordinance, extended and continued, shall be of the same width.

SEC. 3. The east and west boundaries of that portion of said Perry street, extended and widened, shall be formed by continuing in a straight line north the east and west lines of said Perry street, from the south side of Seventh street to the contemplated north terminus of said street, to-wit: the south line of said road in said first section mentioned; and it shall be the duty of the City Engineer of said city, forthwith to survey said ^{Survey.} Perry street as herein provided for the widening and extending the same, and to make a proper plat of such survey, showing the names of the parties owning the land proposed to be taken, when known, and also a description of the lots and lands by numbers, and return such plat to the Mayor of said city.

[Sec. 4 relates to mode of assessing damages, and is not herewith printed—the mode of assessment having been changed by the subsequent amendment (Jan. 23, 1857,) of the city charter.]

SEC. 5. The Street Commissioner of said city shall ^{opening.} thereupon cause said street to be improved and worked as other streets are worked and improved, and all the laws and ordinances of said city, shall thereafter extend over and apply to said street, whenever the same shall be applicable.

Passed and approved May 23, 1855.

CHAPTER XLI.

ARTICLE 1.

AN ORDINANCE relating to Penalties.

Civil proceeding for penalty. SECTION 1. When any person, by violating any ordinance passed, or to be passed, becomes liable to the penalty imposed, and when the same is not in the nature of a criminal proceeding, it is hereby made the duty of the Marshal to institute suit against him before the Mayor or Police Magistrate, in an action of debt for the amount of the penalty, in the name of the city of Davenport.

Imprisonment. SEC. 2. When judgment is rendered against the defendant, and he fails or refuses to pay said judgment and costs, upon demand made by the Marshal, and the same can not be collected of said defendant, the Marshal, by order of the Mayor, shall then confine him in county jail for the space of two days for every dollar of such judgment and costs, provided that the City Council may remit all or any portion of such judgment and costs, or all or any portion of the time of imprisonment for the same.*

Duty of officers. SEC. 3. It is hereby made the duty of every officer of the city to notify the Marshal of every violation of the ordinances that comes to his knowledge.

Payment into treasury. SEC. 4. The Mayor, Marshal and Police Magistrate shall pay into the treasury of said city, all penalties and other moneys when collected, and take the Treasurer's receipt therefor and file the same with the Clerk of said corporation, to be by him charged in the account with the Treasurer. He shall also file with the Clerk all receipts given him by the Treasurer, and take the receipt of the Clerk, which shall be his voucher.

Interference with officers punished. SEC. 5. If any person interferes with the Mayor of the city, with the City Marshal, or any police officer, or

*This section is warranted. Section 3, Art. 8, of the City Charter, and see also Art. 5, Sec. 2, latter part.

any person authorized and required to enforce the laws of this city, to prevent, hinder or delay said officer or person in execution of the duties required of them by any of the ordinances of this city, such person shall be deemed guilty of misdemeanor, and on conviction, shall pay a fine of not less than \$10 nor more than \$100 with costs, or imprisonment in the county jail or city prison not exceeding thirty days.

Passed and approved June 11, 1842.

[Amended so as to read as above printed August 10, 1865.]

ARTICLE 2.

AN ORDINANCE to regulate the time of imprisonment.

SECTION 1. Wherever, in any of the ordinances of the city of Davenport the punishment for violating the same is more than thirty days imprisonment, said ordinances shall and are hereby altered by striking out said time of imprisonment exceeding thirty days, and inserting in its place the words "imprisonment not exceeding thirty days."

Passed and approved March 14, A. D. 1866.

NOTE.—As to misdemeanors, see Chap. 38 and notes.

CHAPTER XLII.

ARTICLE 1.

AN ORDINANCE providing for the abatement and removal of nuisances, and to keep the streets, lanes, alleys, commons and landing of the city of Davenport open and in repair, and to regulate the use of sidewalks.

SECTION 1. If any person shall hereafter erect, or cause to be erected in any street, lane, public alley, or on the landing in said city, any step, cellar door, or

cellar-way, more than four feet from the line of the street into the sidewalk or street, or more than three feet from the line of any alley into the same, and if any person shall hereafter erect any porch, bulk, jut window or other incumbrance, or shall so place, or cause to be placed, any spont or gutters whereby the passage of any street or alley, as aforesaid, shall be obstructed, every person so offending, on conviction thereof, shall, for every offense, pay a fine of not exceeding twenty dollars, and shall immediately cause such nuisance to be removed.*

Horse shoeing
on street.

SEC. 2. No blacksmith, or other person, shall cause any horse, mare or gelding, to stand in the streets, lanes, or alleys, as aforesaid, while he is shoeing or preparing to shoe the same.

Awnings, &c.

SEC. 3. No person shall hereafter place any post, rail, or other obstruction in any of the streets, levees or alleys aforesaid, for the purpose of fastening thereunto any awning, or erect any shed, or awning of boards into or over any part of any of the streets, lanes or alleys aforesaid, or drop any awning nearer to the top of the curb stone than seven feet, nor suffer the same to continue, so as to incommod the citizens, or to obstruct the view from the sidewalk into or across the street.

Open cellar-
ways.

SEC. 4. No person owning or occupying any cellar, the door of which may be in any street, lane, or public alley in said city, shall cause or allow such cellar door to be kept or remain open during any time between twilight in the evening and daylight in the morning, without, at the same time, having a light in such cellar-way.†

Digging up
streets.

SEC. 5. No person, except such as may be under the superintendance of the Street Commissioner, or some other proper officer of the city, shall dig, or in any manner break up any of the streets, sidewalks, lanes, alleys, public grounds, or commons of said city, or shall

*Amended September 17, 1866. (See Art. 2 of this chapter.)

†This section repealed September 17, 1866. (See Art. 2.)

raise or break up any part of any of the pavements or curb stones therein, for any purpose, without previously having obtained permission to do so from the City Council.

SEC. 6. When any person shall be about to erect, or repair any house or building, and shall wish to occupy a part of the street by placing a lime house and materials for building therein, such person shall apply to the City Marshal, who shall allot such part of the street as may be proper and necessary for such a purpose, and grant a permit, to continue in force for such time as shall be reasonable and necessary, which permission shall be in writing, and shall describe the space to be used, and the Marshal, on granting such permission, shall include therein such conditions as a due regard to the convenience of the citizens may require, and if any person, having permission as aforesaid, shall in any respect violate the conditions thereof, or any of them, or permit any such violation, such permit shall be null and void, and he shall also be deemed to have violated a provision of this ordinance.

SEC. 7. It shall be the duty of every person engaged, and the employer of every person engaged in excavating the earth in any of the streets, lanes or alleys, or in any other open or exposed portion of the city of Davenport, where the same shall occur from the excavation of cellars upon individual property, or otherwise, to have the sides of the excavation or embankment made, protected without delay, by suitable barriers, against accidents or injuries to persons or animals passing near the same; and no person, or persons, shall dig, sink, or place any hole, pit or sink, whether the same be covered or otherwise, in any street, lane, alley, or public square, or public grounds, within the limits of this city.

SEC. 8. No person shall cast or lay, or cause to be cast or laid, any shavings, ashes, mud, dung, or any other filth or annoyance, on any pavement, or in any

Building material in street.
See ante, pp. 78, 79.

Excavations to be protected.
See ante, p. 79.

Rubbish, &c.,
on streets.

of the streets, lanes or alleys aforesaid, or shall cast, or let fall from any cart, wagon or other carriage, any rubbish, dirt, or earth, in any street, lane or alley aforesaid, or any part of the public common, save only in such parts and places as shall be appointed or permitted by the Street Commissioner.

Foul discharges.

Soap-boilers,
chandlers, &c.

SEC. 9. No persons within the corporate limits, by themselves, their agents, journeymen or servants, shall discharge out of, or from any still-house, work-shop, or other building, foul and nauseous liquor of any kind whatsoever, into or upon any adjacent grounds, or in any well, vault or sink, or into any of the streets, lanes or alleys of said city; nor shall any soap boiler or tallow chandler keep, collect or use, or cause to be kept, collected or used, within the limits aforesaid, any stale, putrid, or stinking fat, grease, or other matter; nor shall any person, or persons, cast or lay any dead horse, or dead carcass of cattle, sheep, hog, dog, or cat, or any excrement, or filth from vaults, privies or necessary houses, and leave such carcass, carrion or filth within the limits aforesaid, without burying the same a sufficient depth in the ground in some proper place without the limits of the inhabitable portion of said city.

SEC. 10. No person shall cast or leave exposed in any street, lane, alley, or lot, common, sewer, gutter, or sluice-way, in this city, the dead carcass of any animal or any putrid or unsound beef, pork, fish, house dirt, ashes, offal, filth, rubbish, waste matter of any kind, or other putrid or unsound substance, or make use of, keep or furnish in his, her, or their dwelling house, shop, store, factory, or house, cellar, yard, lot, or any other place within said city, any noisome or offensive liquor or substance, prejudicial to the health of the citizens, or any annoyance to the neighborhood.*

Marshal's
power and duty.

SEC. 11. The Marshal of said city shall, and may from time to time, enter into and examine, between

*Amended March 14, 1866, to read as above printed. See, further, *ante*, Chaps. 29, and 44.

sunrise and sunset, any building, cellar, lot or ground, vault, or privy, which he may know or believe to be foul, or damp, or otherwise prejudicial to the public health, and he may direct the cleansing, altering or amending the same, or the removal of all nuisances in and about the premises ; and no person shall resist or obstruct said officer in so doing, or shall neglect or refuse to remove any such nuisance when so directed.

SEC. 12. No driver, owner, or person having charge of any cart, dray, wagon, stage, or other vehicle, new street. Carts, &c., not to obstruct
or old, furnished or unfurnished, shall suffer the same to be, and remain in any street, lane, alley or common within said city, in such a situation to interrupt the convenient passage of the same, or to incommodate the owner or occupant of any building ; nor shall any person stop any cart, dray, wagon, stage, or other vehicle, so as to interrupt the crossing at the intersection of any street, lane or alley, and who shall not immediately remove the same on request being made, or shall be absent from such cart, dray, wagon, stage, or other vehicle, if a horse or other beast shall be attached thereto, so that such request cannot be made.

SEC. 13. Every person riding, driving, or having charge of any horse or other animal, shall have his beast so secured as to hinder and restrain him from running, galloping, or going at immoderate rates ; and no person shall ride or drive any beast, or beasts, in the streets, lanes, alleys, or public grounds, at such immoderate rates as to endanger any person standing or walking in the same.

SEC. 14. No person shall saw or cut any firewood, on any brick pavement or foot-way, or any street aforesaid, or shall set or place, or shall cause to be set or placed, any goods, wares, or merchandise, or other articles, by way of exposing the same for sale, or otherwise, on or over any of the brick or stone pavements, or foot-ways, or in any porch, or on any cellar-door, or suspend any goods, wares or merchandise, or other article, from any

house or store, by way of exposing the same for sale or otherwise, so that any such goods, wares, or merchandise, or other article, shall extend or project into or over the street sidewalk more than four feet from the line of the street, or more than four feet high from the top of the pavement or sidewalk, so that the same shall project into or over the street or sidewalk more than eighteen inches from the wall or front of any such house or store.

Provided, that this section shall not be construed in such a manner as to prohibit merchants and others engaged in trade, from the free use of the streets and sidewalks, in common with others, in conveying merchandise and other property to and from their stores while engaged in receiving or delivering goods, nor to prevent any person from unloading any firewood, or other article proper to be placed on the street, or conveying the same across the sidewalk to and from his own lot or tenement, but no merchant, or person, shall abuse this privilege by placing, or permitting, or suffering any article to be placed or left remaining on any sidewalk, or any street in front of his, her, or their store or dwelling, more than four feet from the line of the street, so as to incommodate others, or shall neglect, or refuse, on request of any neighbor, or upon the request or order of either the Mayor, Marshal, or any of the Aldermen of said city, to cause any article placed on the sidewalk, more than four feet from the line of the street, or in front of his or their premises, to be immediately removed and kept out of the way so as not to incommodate others.

Stagnant water. SEC. 15. All grounds within the city, where water shall at any time become stagnant, shall be raised, filled up, or drained; and it is hereby made the duty of the Marshal or Street Commissioner of said city, when directed by the City Council, to give a written or printed notice to the proprietor or proprietors, or to his, her, or their agent, if residents of said city, and to non-resident proprietors, who have no agents therein, by

publication in one of the newspapers printed in said city, one week, of all, or any ground, subject, at any time, to be covered with stagnant water, to fill up, raise or drain such grounds at his, her, or their expense, and to such height, and in such manner as may be designated by the City Council, which shall be so done within twenty days after the service of such notice, or the expiration of the time limited for the publication aforesaid.

SEC. 16. If such proprietor, or proprietors, or his, <sup>City may fill up
or drain.</sup> her, or their agent, shall refuse or neglect to fill up or drain such grounds in such manner, and within the time limited for the doing thereof, as aforesaid, the Marshal or Street Commissioner of said city shall do the same at the expense of the city, and report the amount thereof, with all costs arising thereon, to the City Council, which they shall assess, together with twenty-five per cent. penalty on the sum (provided that such penalty does not exceed twenty dollars) on the lot or lots of ground so filled up, raised, or drained, and the Clerk of said city shall place a duplicate of the assessment so made in the hands of the Marshal, who shall proceed to collect the same by sale of such lot or lots, if not otherwise paid, in the same manner with the same powers, and under the same regulations, and a deed shall be made therefor to the purchaser, subject to the same right to redemption by the proprietor, his heirs or assigns, as the law prescribes for the sale of city property for the non-payment of corporation taxes. The assessment to be made out by the Clerk as aforesaid, shall be made out and delivered within twenty days after the same has been levied by the City Council, and he shall annex to, or accompany said assessment with a warrant, to be signed by the Mayor and Clerk, for the collection of the amount so assessed, which shall be sealed with the common seal of said corporation.

SEC. 17. Any person violating any provision of the ^{Penalty.} foregoing ordinance, (and where the penalty is not set forth in the same section,) shall, on conviction thereof,

be punished by a fine of not less than five nor more than one hundred dollars, or imprisonment in the county jail or city prison, not exceeding thirty days, at the discretion of the officer trying the case.*

State law adopted.

SEC. 18. In all cases where no provision is herein made, defining what are nuisances, and how the same may be removed, abated or prevented, in addition to what may be declared such herein, those offenses which are known to the common law of the land, and the statutes of Iowa as nuisances, may, in case the same exist within the city limits, be treated as such, and proceeded against as is in this ordinance provided, or by any other law which shall give the officer trying the same jurisdiction.

Marshal's duty to abate.

SEC. 19. When any nuisance exists, such as is contemplated in this ordinance, it shall be the duty of the Marshal, when apprized of the same by the Mayor or any Alderman of said city, forthwith to cause the same to be removed, abated, or its further existence or spread prevented, and when this ordinance does not define how the same shall be prevented or removed, the same shall be done by the Marshal at the expense of the person placing the same in the city, or suffering the same to exist on or about their premises, at his, her or their instance, and for all abating and removing under this, or by virtue of any other law or ordinance of the Council hereafter passed, by the proper officer or under his instruction, the person or persons whose duty it should have been to remove or abate the same, shall pay all reasonable costs and charges for the same, together with twenty per cent. added thereto, as a compensation to the proper officer for removing the same, and on neglect or refusal to pay the same, such person or persons shall be liable to a fine of not less than double the amount of such costs and charges, and costs of suit, to be recovered before the Mayor of said city as other fines are recovered,

Creator of nuisances liable.

*Amended April 11, 1866, and March 14, 1866, to read as above printed.

and he, she, or they may stand committed before the Mayor until such fine and costs are paid.

SEC. 20. When the Marshal shall notify any person or persons that a nuisance exists in, or about, or on his, her, or their premises, that he, she, or they, are required to remove, abate, or prevent, such person or persons may have the same inquired into, whether they are liable to remove, abate, or prevent said nuisance by forthwith notifying the Marshal, or the agent, of the fact, and giving notice to the Mayor of said city within six hours, that he, she, or they, are not liable to comply with the order of the Marshal, or his agent, and that he, she, or they desire that the same be inquired into. Said notice to said Mayor shall be in writing, and signed by the party denying that it is his, her, or their duty to remove, abate, or prevent said nuisance.

SEC. 21. It shall be the duty of the said Mayor, on his receiving the notice in the last section, forthwith to enquire into the same, to take testimony in the matter, and determine the same on the very right of the case, as is in this ordinance required, or as the laws of the land may require. And in case said Mayor shall find that it is the duty of such person or persons requiring such enquiry to be made, to remove, abate, or prevent such nuisance, to enter a fine of not more than one hundred dollars and costs of suit against such persons, and also an order to the Marshal, to forthwith remove, abate, or prevent such nuisance, and such person or persons shall pay double the amount of the costs and charges for such abatement, removal and preventing, as is provided in Section 20 of this ordinance, and to be recovered in like manner.

Passed and approved November 30, 1848, and May 15, 1855.

[*NOTE.—Further as to nuisances see "Index"—HEALTH OF CITY.*]

ARTICLE 2.

AN ORDINANCE to amend Chapter 42 of the Revised Ordinances of 1862.

No part of sidewalk, &c., to be used to get access to second story.

Same as to cellar ways, &c.

Cellar doors to be level with walk and kept shut.

Openings in sidewalk.

Steps to first floor.

All of sidewalk to be kept clear.

Repeal.

SECTION 1. Section one (1) of Chapter 42 of the Revised Ordinances shall not be construed to authorize the use of any part of any street, sidewalk or alley, for the erection of stairs, steps, or other mode of access to the second stories of buildings.

Nor shall said Section one (1) be construed to authorize the enclosing by rail or otherwise of any portion of any sidewalk, street, or alley, or the erection of any railing upon any sidewalk, street, or alley, as a means of obtaining access or a passage way to the cellar or basements by occupying part of the sidewalk for that purpose; but such railings already existing while not hereby legalized shall not be abated unless upon the special direction of the City Council.

The frames of cellar doors and cellar ways built under Section one (1) of the aforesaid ordinance shall not be built above the level of the sidewalk, and said cellar ways shall be kept by the owner or occupant, or both, securely covered with a door or doors which shall remain closed at all times except when actually used to put goods or merchandise into the cellar or basement. And all openings in the sidewalk for lighting and ventilating cellars or basements shall be placed on a level with the sidewalk and securely made.

SEC. 2. And no steps from the sidewalk to the first floor of any building shall hereafter be erected upon any part of the sidewalk above the level of the same.

SEC. 3. And no porch, bulk or jut window, or any other incumbrance or erection, shall be erected or placed so as to occupy any part of the sidewalk above the level thereof.

SEC. 4. Section 4 of said Chapter 42 is hereby repealed.

Passed and approved September 17, 1866.

CHAPTER XLIII.

AN ACT establishing and regulating the Police Department of the city of Davenport.

SECTION 1. That there be and hereby is established a ^{Police department estab-}
Police Department for the city of Davenport, which ^{lished, &c.}
shall consist of one Chief of Police, one or more lieutenants of police, and such other policemen as shall from time to time be appointed by the Mayor, by and with the consent of the City Council, who shall act and be known as police officers of said city.

SEC. 2. The Mayor shall be the head of the Police ^{Mayor the head thereof.}
Department, and shall superintend and direct the police generally, and from time to time give such directions as he may deem proper and necessary for the preservation of the peace and good order, and the enforcing of the laws and ordinances of said city.

SEC. 3. It shall be the duty of the Chief of Police ^{Duties of chief of police de-}
to cause the public peace to be preserved, and to see ^{fined, &c.}
that all the laws and ordinances are enforced; and whenever any violation thereof shall come to his knowledge; or be reported to him, he shall cause the requisite complaint to be made, and see that the evidence is procured for the successful prosecution of the offender or offenders. He and his subordinates shall obey all such police rules as may be established for the regulation of the police department; and shall, (in subordination to the Mayor,) in case of riot, tumult, insurrection, or threatening thereof, take command in person of the police officers and direct their movements and operations in discharge of their duties. He shall keep a record and make to the City Council monthly reports of the affairs and operations of the police department in conformity with the requirements of the police rules. He shall be responsible for the efficiency, general conduct and good order of his department, and shall promptly report to the Mayor, in writing, all complaints made to him, or in any way coming to his knowledge,

prejudicial to the honesty, sobriety and faithfulness of any of his subordinates.

Appointment
and compensa-
tion.

Power to ar-
rest, &c.

Arrest and sub-
sequent pro-
ceedings.

Fees.

Rules may be
established.

SEC. 4. The Chief of Police and Lieutenants of Police shall be appointed by, and removed at the pleasure of the Mayor, by and with the ratification and consent of the City Council, and they and the several policemen shall receive such compensation as is now, or hereafter shall be fixed by the City Council. And no member of the police department shall serve any civil process or do any other business or service that will interfere with his duties as policeman. Each member of the police department shall have power to arrest all persons in the city found in the act of violating any law or ordinance, or aiding or abetting in any such violation, or any person whom the officer has reasonable grounds for believing has committed a public offense, and who is likely to escape before a complaint can be filed and a warrant can be issued for his or her arrest, and take all such persons so arrested to the office of the Police Magistrate for trial, if in the daytime, and if an arrest is made in the night time, the officer shall detain such person or persons in such place as is provided for the imprisonment of offenders against the city ordinances, until the next morning, then to be taken before the Police Magistrate for trial. They shall have power and authority in the city to serve and execute warrants and other processes for the apprehension and commitment of persons charged with, held for examination or trial, or taken in execution for, the commission of crime or misdemeanor, or the violation of any law or ordinance of the city, in same manner as constable by the laws of this State.

SEC. 5. The fees for the services of process and for making arrests, by any member of the Police Department, shall be the same as allowed to constables of towns for services in like cases.

SEC. 6. The Mayor, with the concurrence of the City Council, is hereby authorized and required to make and establish such rules, by-laws and regulations, (to be styled police rules,) not inconsistent with the city

ordinances, for the government and control of the members of the Police Department, as may be deemed expedient and proper to carry out the objects of this ordinance. The police rules may prescribe the duties of the officers and policemen more specifically than is herein contained, and may provide such penalties and forfeitures for neglect of duty, or improper conduct, such as suspension from pay, fine and reprimand, as may be deemed necessary and expedient for the proper regulation of the different members of the Police Department, which rules shall be in writing or printed, signed by the Mayor or Clerk, and be binding on all the officers connected with the department, after notice thereof. A written or printed copy of such rules shall be delivered to each police officer, and copies shall be posted conspicuously in the police office and Police Magistrate's office.

SEC. 7. Any police officer who shall neglect or re-^{Official neglect.} fuse to perform any duty required of them by the ordinances of this city, or the "police rules," or who shall, in the discharge of his official duties, be guilty of any frauds, extortion, oppression, favoritism, partiality, bribery, or willful wrong or injustice, shall forfeit and pay a penalty not exceeding one hundred dollars and costs ^{Penalty.} of prosecution.

SEC. 8. Whoever shall unlawfully resist any police ^{Resistance to} _{officer.} officer in the discharge of his duties shall be deemed guilty of a misdemeanor; and any person wilfully refusing to assist a police officer in making an arrest when called upon so to do shall be guilty of a misdemeanor.

SEC. 9. All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

Passed and approved September 25, 1866.

[NOTE.—COMPENSATION OF POLICE FORCE.—The committee on ordinances reported the following resolution on a resolution to bring in an ordinance to regulate the police force:

Resolved, That the police force shall consist of five watchmen, whose salary shall be \$1.50 for a service of twelve hours duty. (Adopted March 14, 1866.)

Charter gives Council power to regulate police force. See *ante*, pp. 40, 75, 84.

CHAPTER XLIV.

ARTICLE 1.

AN ORDINANCE regulating the construction of privies in the city of Davenport.

Privies—depth.

SECTION 1. All privy vaults hereafter constructed shall not be less than six (6) feet in depth, from the surface of the ground, except such localities where water might be reached before obtaining the depth of six (6) feet, and then, in such cases, a less depth, (to be indicated by the approach of water,) shall be sufficient.

Walled.

SEC. 2. Every privy hereafter built, shall be walled with 2-inch plank, stone or brick, and no privy shall be built unless upon a vault as above described. If the vault is sunk more than six feet it must be walled with stone or brick.

Two feet from line.

SEC. 3. No privy shall be built nearer the line of the lot upon which it stands than two feet, unless by the consent of owner of the adjoining lot.

Depth.

SEC. 4. This ordinance shall not be so construed as to prevent the construction of privy vaults of a less depth than six feet; *Providing* they be walled with stone or brick, and so built as to enable them to be easily cleaned and cleansed; and all such vaults shall be thoroughly cleaned and cleansed once in each month, from the first day of April to the first day of October in each year.

Cleaning.

SEC. 5. Any person violating the provisions of this ordinance shall be fined not more than fifty dollars for each offense, to be collected in the name and for the use of the city.

Passed and approved Aug. 5, 1854. Amended Sept. 25, 1866.

ARTICLE 2.

AN ORDINANCE regulating the cleaning and cleansing of privies.

SEC. 1. All privies, any part of the contents of which

are above the surface, or within two feet of the surface ^{When nuisan-}
of the earth, and all other privies that are foul, emitting
smells and odors prejudicial to the public health, are
hereby declared nuisances ; and the Marshal or Board ^{Power to abate.}
of Health, or any health officer, or Health Inspector,
shall have power to abate the same.

Such officer shall give written notice to the owner or ^{Notice to owner}
occupant to cease the same, or disinfect, or to remove ^{or occupant.}
the contents from the city, as the case may require,
specifying in a general way what is to be done, and re-
quiring it to be done forthwith. If the orders are not
complied with in twelve hours, the said officer shall pro-
ceed to put the privy in order, keep an account of the
expenses, for three times the amount of which the own-
er, or landlord, or tenant, or occupant shall be liable in ^{Penalty.}
an action by the city, and shall also be liable to be
prosecuted for a misdemeanor against the ordinances of
the city.

And said suit and prosecution may be against the ^{Who liable.}
owner, agent or landlord, or lessee, or occupant, or
against either or all.

But when practicable the Marshal, or other officer, ^{Who notified.}
shall notify the owner, or other agent and landlord, as
well as the lessee or occupant ; but it is no defense to
a party who has been notified that some of the other
parties have not been notified.

Passed and approved September 17, 1866.

CHAPTER XLV.

ARTICLE 1.

AN ORDINANCE for the protection of shade and ornamental trees in the city of Davenport.

SECTION 1. No person shall injure or destroy any ^{shade trees.}
shade or ornamental tree that now is or hereafter may
be planted in the streets or public squares of the city of
Davenport.

Same.

SEC. 2. No person shall tie or fasten any horse, or any other animal, to any shade tree, or ornamental tree planted, or that may be planted in the streets and public squares of said city, or to any boxing which may be placed around them to protect from injury, or pull down, cut, or destroy such boxing, or other protection, and every person who shall violate any provision of this ordinance, shall, upon conviction thereof, pay a fine of not exceeding twenty dollars for each offense, and shall also be liable for all damages to the party injured.

Passed and approved June 11, 1842.

ARTICLE 2.

AN ORDINANCE relating to shade and ornamental trees, and other trees.

Trees liable to do injury to be removed or made secure.

Penalty.

SECTION 1. If the City Marshal, or the Mayor, shall deem any shade or ornamental or other tree, situated upon any street or sidewalk, or in any yard near to the sidewalk or street, to be in a dangerous and insecure condition, liable to fall and injure persons upon the street or sidewalk, such officer shall serve a notice upon the owner, if known and within the city, or if not, then upon the occupant of the lot, to cut down said tree or make it safe and secure; if this notice is not complied with within twenty-four hours, the Marshal or Mayor shall cut down or remove said tree, and the owner or party who should have cut down or removed it, shall be liable for three times the amount of the expenses, to be recovered in an action by the city of Davenport.

Passed and approved September 19, 1866.

NOTE.—See Chap. 105, which prohibits injury to tree boxes and regulates posting bills thereon.

As to power of city to pass ordinances of this character, see *ante*, p. 78.

CHAPTER XLVI.

AN ORDINANCE to determine tie votes and contested elections.

SECTION 1. Whenever two or more persons receive ^{Tie Election} an equal and the highest number of votes for Mayor, Alderman, or any other elective municipal office, the Clerk shall issue a notice to such persons of such tie ^{Clerk's duty.} vote, and require them to appear at the next special, or adjourned, or regular meeting of the Council to be held after the service of such notice, to determine by lot which of them is elected.

SEC. 2. The lot shall be arranged by the Mayor, or ^{Lot.} acting Mayor, in the presence of the Council, and of the parties, if present. If either, or any of the parties, fail to appear, and take part in the lot, the Mayor, or presiding officer, shall draw for him, and the proceedings and results shall be entered upon the journal by the Clerk.

SEC. 3. The City Council shall be tribunal for the ^{Contested Elections.} trial and decision of contested city elections—the Mayor presiding, or if he be the party, then a Mayor *pro tem.* elected by the Council. No officer whose right is being contested, shall act officially in the determination of the contest. The contestant must file with the Clerk of the ^{Contestant's duty.} city a verified written statement giving notice of his intention to contest the election; the name of the incumbent, the office contested, the time of election, and the particular causes of contest. He must also file a bond, with sureties, to be approved by the Clerk, conditioned to pay all costs in case the election be confirmed, or the statement be dismissed, or the prosecution fails.

SEC. 4. When the reception of illegal, or the rejec-^{same.} tion of legal votes is the ground of the contest, the names of the persons who so voted, or whose votes were rejected, with the ward or wards where they so voted or offered to vote, shall be set forth in the statement

above provided for. And in all cases the statement must specify with particularity the grounds upon which the contestant relies.

Clerk's duty.

SEC. 5. The Clerk shall cause a notice of this statement to be served upon the incumbent without delay. The incumbent shall, under oath, answer the statement and file the answer with the Clerk, within five days after being served with notice of the contestant's statement. After the time for answering has elapsed, either party may take testimony by deposition, on giving two days notice. The Council may direct all testimony to be taken by deposition if it sees fit to do so. If it does not, the evidence may be verbal, or by deposition, or both. If a witness, whose testimony has been taken by deposition, is a resident of the city, or can readily be produced, the Council may, if it sees fit, order him to be produced to testify in their presence. Intended absence, or non-residence of the witness, is not necessary in order to entitle a party to take his deposition. No *ex parte* evidence shall be received, except by consent. And the Council shall determine the contest at its next meeting after the statement and answer have been filed, unless good cause for continuance be shown by affidavit stating the facts. No adjournment or continuance shall be for a longer time than necessary to give the parties an opportunity for a fair trial; and the parties may be heard by themselves or by counsel.

Trial.

State law adopted.

Costs.

SEC. 6. All of the provisions of Chapter 37 of the Revision of 1860, for contesting the election of county officers, so far as the same are applicable, and except as herein modified, shall apply to contests held under and by virtue of this ordinance. The result, the vote being taken by ayes and nays, shall be entered upon the records of the Council. The unsuccessful party is liable for costs of officers and witnesses, and depositions. And for these costs an action lies by the successful party, or the officer, or witness entitled to his fees. In no case shall the city be holden liable for such costs.

SEC. 7. A contestant who elects to proceed under this ordinance is debarred from proceeding by *mandamus, quo warranto*, or otherwise in the District Court. The judgment or decision of the Council concludes both ^{Judgment.} parties. This ordinance is not intended to debar a contestant from having his right determined in the District Court, by an appropriate action, if he sees fit to proceed in that way.

SEC. 8. An ordinance providing for tie elections, ^{Repeal.} passed August, 1, 1852, is hereby repealed.

Passed and approved September 19, 1866.

[NOTE.—Whether under the charter (Art. 2, Secs. 4 and 5; Art. 3, Sec. 2; Art. 5, Sec. 2) the jurisdiction of the District Court is taken away, is a question which the ordinance does not touch. See *Ex parte Heath*, 3 Hill (N. Y.), 421, 52; 5 id., 616; *The State v. Funck*, 17 Iowa, 365; 22 Barb., 72; *Ex parte Strahl*, 16 Iowa, 369. The above sections of the city charter clearly authorize the ordinance.]

CHAPTER XLVII.

AN ORDINANCE for opening and establishing Seventh street, and changing the boundaries thereof, through a portion of Antoine Le Claire's Second Addition to the city of Davenport.

SECTION 1. That portion of Seventh street, dividing ^{width.} out-lots number sixteen, seventeen, and thirty-two, and blocks number fifty, fifty-one, and fifty-two, is hereby opened and established at sixty-six feet in width, to be calculated from the north side of said blocks.

SEC. 2. The remainder of said street, as it appears ^{Vacation.} on record in the Recorder's office of Scott county, is hereby vacated.

Passed and approved January 4, 1854.

CHAPTER XLVIII.

AN ORDINANCE relating to sidewalks.

SECTION 1. Whenever it shall become necessary and expedient to pave and grade, plank or gravel the sidewalks, on any street, avenue, or alley, or any part thereof, within the limits of said city, the City Council shall pass an order to that effect, which order shall set forth the particular locality where such paving and grading, or graveling, is required to be done, and the time that is allowed for completing the same; and the publication of such order in one of the newspapers in the city, for one week, shall be deemed a sufficient notice to the owner or holders of lots fronting on any such street, lane, avenue, or alley, where any such paving and grading, planking or graveling, is to be done, as therein specified.

Grade.

SEC. 2. All such paving and grading, planking or graveling, shall be in conformity with the grade of the street, lane, avenue, or alley, (unless otherwise provided in the order of the City Council) under the direction of the Marshal; and all expenses of paving, grading, graveling or planking, and preparing of any sidewalk, shall be paid by the owners or holders of lots fronting where such paving, grading, graveling, or repairing is to be done.

Owner to pay,
&c.

SEC. 3. If the owner, or holder, of any lot, or part of lot, shall neglect to grade, gravel, plank, or to pave his sidewalk, in conformity with the order of the City Council, published as aforesaid, the Marshal shall contract for the same to be done at the expense of the city, and shall make his report of the expense thereof to the City Council, which, if found to be correct, shall be approved by an order or resolution of the City Council, and shall constitute a charge or assessment upon the respective lots or parts of lots improved, paved, or repaired, and shall constitute a personal debt or claim

If owner neg-
lects, Marshal
may cause to be
done.

against the person or persons who were owners when the work was ordered by the Council, or when it was done, or when the assessment was made, and it shall also be a lien upon the respective lots in the possession of any owner from the time the work was done. The mode of collecting such assessments shall (if by action) ^{Mode of collecting, &c.} be the same (as near as may be) as prescribed in the Revision of 1860, sections 1068 and 1069, which are hereby adopted as part of this ordinance. The report of the Marshal to the City Council, and all the facts therein stated, shall be presumed to be correct, and shall (unless shown to be fraudulent or collusive) be sufficient evidence to entitle to a recovery.

And if it appears to the court that an order for improvement by the City Council was in fact made, that this was published, that the work was not done by the owner or proprietor, but was done by the city or by a contractor for the city, the city or the contractor, if the suit is by him, must recover; all other questions, and all omissions and informalities, errors and mistakes, going only (if deemed by the court important) to the question of costs.*

SEC. 4. Upon the Marshal's report being made and approved, as provided in the last section, the City Council, instead of proceeding to collect the assessment, or charge by action as therein provided, may, if it has been petitioned to do so by the owners of more than on half of the property to be so taxed, levy a special tax all lots or parts of lots respectively, in front of which the Marshal may have contracted any such grading, graveling, planking or paving, which tax shall be of sufficient amount to cover the expense thereof, together with all costs or expenses therewith, and immediately after such levy, the Marshal shall advertise and sell the same, or so much thereof as may be necessary to pay the expenses

* LOCAL IMPROVEMENTS—SIDEWALKS, &c.—MODE OF COLLECTION.—Estimate of Engineer may stand for assessment, and it is lawful to provide for its collection by precept issued by Mayor and Clerk or other officer of the city. Party injured may appeal or transfer his cause to court. 17 Ind., 169.

Notice of sale, &c. and costs of such grading, graveling, planking or paving, and costs of sale. The advertisement and sale to be conducted according to, and governed by the ordinances of the city in force at the time of such sale, relating to the city revenue from taxes, and the same rights and terms of redemption shall exist as may be provided for by such ordinances. *Provided, however,* that when any such lot, or part of lot, is wholly, or in part, owned by a minor heir, and the guardian of such minor heir shall, by a petition to the City Council, establish the fact of such minority, and of his authority to act as guardian, and desire to make any special contract with said City Council for having any such paving, graveling or grading done, the said City Council are hereby authorized to instruct the Marshal to enter into such contract, and a memorandum of the terms of such contract so authorized to be made, shall be entered upon the journal of the Council, and the further stipulation, that if the first payment of any such contract is not punctually made, the City Council shall then proceed to levy a special tax as aforesaid, covering the amount of such contract, interest and costs; and the same proceedings shall be had as if no such contract had been made.

Deed of Marshal and effect thereof.

SEC. 5. The deed of the Marshal shall be *prima facie* evidence of the regularity and validity of the sale, and of all previous proceedings, and no deed shall be defeated if it shall appear (and the Marshal's report is made evidence) that the work was ordered, the notice published, and the work not done by the owner, but done by the city; *Provided, however,* that it is the duty of the Marshal (which duty shall be presumed to have been performed unless the contrary is shown) to give personal notice to the owner, if known, or to the occupant of the lot, if the same be occupied of the sale at least ten days prior thereto. No informality, omission or defect shall, in any event, defeat the right of the city, or the purchaser to the amount which the improvement

cost, with interest and proper costs, the same being hereby declared an equitable lien upon the property.

SEC. 6. All the preceding provisions of this ordinance apply to *repairs* to sidewalks as well as to the original construction of the same.

SEC. 7. An ordinance on this subject passed and approved December 4, 1852, (saving all rights to the city accrued thereunder,) is hereby repealed.

Passed and approved September 19th, 1866.

[NOTE.—CONSTRUCTION OF SIDEWALKS.—This ordinance assumes that under Art. 5, Sec. 2, of the charter, the power of the city over *streets* (which would include sidewalks) would justify an ordinance requiring the owners to build sidewalks without a previous petition of more than one-half of the owners, and that for the expense thus incurred an action will lie in behalf of the city. But under Sec. 2 of the amended charter of January 23, 1857, the ordinance assumes such petition to be necessary in order to justify the stringent proceeding of a "*special tax and sale*" of the property. The ordinance as above framed is believed to be warranted by the organic law of the city. But while this remains to be settled by adjudication, the safer way, when practicable, is for the Council to require the petition of more than half the property owners to be taxed. Such a petition removes all doubt.

As to the validity of this ordinance, see *Paxton v. Trenton*, 1 Green (N. J.), 196; cited and approved in *Boston v. Shaw*, 1 Met., 130, 133.

As to liability of city for unsafe sidewalks and other subjects, see "Index"—
[SIDEWALKS.]

CHAPTER XLIX.

ARTICLE 1.

AN ORDINANCE to prevent hogs from running at large.

SECTION 1. That hogs running at large in the streets and other public places in the city of Davenport, be, and they hereby are declared to be a nuisance.

SEC. 2. No hogs of any description shall be permitted to run at large within the city limits of the city of Davenport; and all hogs or pigs thus found shall be taken up by the City Marshal and placed in some secure pen or pound, to be by him provided for that purpose.

SEC. 3. When any hog or hogs, pig or pigs, are thus taken up and taken up, it shall be the duty of the City Marshal to sell.

sell the same at public auction to the highest bidder, for cash, after giving five days notice of the time and place of said sale, by posting, written or printed notices at one of the most public places in each ward of said city; *Provided*, that if the owner, or any person authorized by him, shall, on or before the time fixed for said sale, pay the costs and charges thus far made, the City Marshal is hereby required to release said hog or hogs, pig or pigs, upon satisfactory proof of ownership. But if the same are not so released they shall be sold in accordance with said notice, and the money arising from said sale, after the expenses of taking up, keeping and selling the same are deducted, shall be paid over to the owner or owners, on their proving to the City Marshal that the property in such hog or hogs, pig or pigs, is in the person or persons claiming to be said owners; but if no owner appears, the said money, after deducting the costs aforesaid, shall be paid into the city treasury.

Fees and expenses.

SEC. 4. The fees of the City Marshal under this ordinance shall be the same as those of constables upon the sale of like property under executions; and the Marshal shall be allowed for keeping said hogs the sum of ten cents for each 24 hours which each of said hog or hogs, pig or pigs, is by him kept by virtue of this ordinance.

Interfering with officer.

SEC. 5. Any person who shall interfere with any Marshal, or police officer, in this city, to prevent, hinder or delay such officer in executing his duties under this ordinance, relating to the taking up, impounding, holding or selling said hog or hogs, pig or pigs, or who shall open any gate, or take down any fence or gate, or take down any part of the fence enclosing the pound, shall, on conviction, pay a fine of not less than three dollars for each offense.

Passed and approved June 3, 1863.

AN ORDINANCE to amend an ordinance to prevent hogs from running at large, passed June 3, 1863.

SEC. 6. If the owner, or his servant, or agent, or if

any other person having control over or charge of any ^{Personal liability of owner, &c.} hogs, or pigs, or swine, shall let or permit the same to run at large, or shall fail to prevent the same from running at large, contrary to the provisions of this ordinance, shall be fined in the sum of five dollars for the first offense and ten dollars for the second; and the owner, as well as his agent and servant is liable under this ordinance to these penalties for its violation.

Passed and approved September 24, 1866.

[**NOTE.—IMPOUNDING—STRICT COMPLIANCE.**—Marshal must strictly comply with the ordinance or he becomes a trespasser from the beginning. 13 Pick., 384; 4 id., 258; 21 id., 55; 13 Met., 407; 7 Cushing., 355; 9 Pick., 14; 12 Met., 118; 23 Pick., 255; 12 Met., 198.

RESCUE.—Owner cannot legally break pound and rescue animals. 5 Pick., 514; 5 Cushing., 267.

POUND DEFINED.—2 Cushing., 305.

DELEGATING POWER TO OTHERS.—Marshal cannot delegate his authority to others to impound for him generally and in his absence, but may have assistants to act in concert with him. *Jackson v. Morris*, 1 Denio, 199.

PUBLIC POUND.—Officer must use the public pound. 1 Rhode I., 219. Under our charter and ordinances the Marshal may use any pen or pound provided by him for that purpose.]

ARTICLE 2.

AN ORDINANCE to prevent swine from being kept in certain parts of the city, and to regulate the mode of keeping same in other parts of the city, and for other purposes.

SECTION 1. No person shall, after the first day of March, 1867, keep any hogs, pigs, or swine of any kind, within the following limits in the city of Davenport, viz: The river on the south, the city boundary on the east; Third street in East Davenport on the north, extending through to east line of the city, thence south from west end of said Third street to Fulton street; thence west along said Fulton street and the line of said Fulton street continued west to Farnam street; thence south along Farnam street to Twelfth street; thence west along Twelfth street to Ripley street; south along Ripley street to Eighth street; west on Eighth street and the line of Eighth street extended west to a point opposite the north end of Fillmore

street; thence south to Fillmore street and down said Fillmore street to Fourth street; thence west along Fourth street to Division street; thence due south to the river, and along the river to the east line of the city—Hogane & Lambach's map of the city to be referred to for the better ascertainment of the said limits, and the streets and boundaries above designated.

Hogs to be confined in certain limits.

SEC. 2. Outside the limits specified in the last section, and within the city limits, it shall not be lawful for any person living upon land laid out in lots or outlots to keep any hogs, unless the same are confined in pens, under the following restrictions, viz:

Restriction.

1. No person shall keep any hogs or swine unless he or she is the head of a family, and no head of a family shall have more than one pen, and in that pen there shall not be more than two hogs, and the subsequent progeny or litter of said hogs, which progeny or litter may be kept until they are eight weeks old, and no longer, after which the number of swine in the pen must be reduced again to two, and not more, whether large or small.

Same.

2. The said pens or enclosures shall at all times be kept clean and well drained, so that the same shall not emit any offensive odor or smell; and if the City Marshal, or any health officer of the city, shall be of opinion that they are not thus kept, he shall notify the owner that he is prohibited from any longer keeping hogs in said pen, or elsewhere in the city, and to remove the same within twelve hours, and clean up all filth about the pen; and if said owner fails to comply with this notice, within the space of twelve hours, the Marshal, or health officer, shall take possession of said hogs or swine, and sell the same, upon giving five days notice in the manner provided in this ordinance, to the highest bidder for cash, and after deducting his fees and expenses, shall pay the surplus, if any, to the owner, if it be claimed, if not claimed, then into the city treasury; and he may also proceed against the owner as for keeping a nuisance, and such owner shall

Penalty.

Sale of hogs.

be liable accordingly for all the penalties prescribed against those who keep or maintain a nuisance.

SEC. 3. It shall not be lawful after the 1st day of ^{Pens for gain} _{forbidden.} March, 1867, for any person, company or corporation to keep for gain or hire, in the city of Davenport, any pen, yard or enclosure for swine; but it shall be lawful ^{Hogs in transi-} _{tu.} to drive swine through the city (there being no unnecessary delay) for shipment or slaughter. This ordinance is not intended to prohibit hogs from being kept, outside of the limits specified in the first section, for slaughter or shipment, in pens or yards, between the ^{For shipment,} _{&c.} first day of November and the first day of March of each year, but they shall not be therein kept for such purposes at any other time, and whoever does so, or allows it to be done, is guilty of a misdemeanor. And within ^{Regulations.} ten days after the said first day of March in each year, the said yards or pens shall be thoroughly cleaned, and all manure removed by the owner or proprietor, to the satisfaction of the Marshal, or health officer; and if the ^{Penalty.} owners or proprietors of said yards or pens fail to do so, they shall be proceeded against by the Marshal or Health Officer as for a nuisance, and be held liable and punished accordingly.

SEC. 4. Hogs or swine found running at large within ^{Hogs at large—} _{how dealt with.} the city limits shall be dealt with and the owner proceeded against as provided in the ordinance relating thereto. If hogs, or swine of any kind, are found in pens or other enclosures, within the limits specified in the first section of ordinance; or if outside of said limits and within the city limits, the Marshal, or Health Officer, shall find in pen or pens swine not owned by the head of a family, or if he finds one family with more than one such pen, or if he finds pens with more than two hogs and the progeny or litter of such, contrary to section two (2) of this ordinance; or if he finds swine in yards or enclosures kept for hire, or if he finds hogs or swine used or kept contrary to this ordinance, he shall at once take possession of such hogs or swine,

Penalty and
proceedings for
violating this
ordinance.

and give five days notice of the time and place of sale in one of the city papers, or by posting written or printed notices in one of the most public places in each ward of said city, and shall then sell the same at public auction, to the highest bidder, for cash, the surplus, after paying the fees, costs and expenses of sale, to be paid to the owner if claimed, if not, then to be paid into the city treasury. But the owner of said hogs may, if he contests or denies that there was a violation of this ordinance, notify the Marshal or Health Officer to appear before the Police Magistrate of the city, and the question shall be summarily tried as one of fact, and the sale meanwhile suspended. If decided in favor of the owner, the hogs shall be released; if decided against him, the sale shall proceed, and shall not be suspended by an appeal, but the proceeds of sale shall be held to await the decision on appeal, if one is taken. The city may also appeal.

Fees of Marshal
or Health Offi-
cer.

SEC. 5. The Marshal or Health Officer shall be allowed, for taking possession of each hog, the sum of 25 cents, and for keeping the same, for each 24 hours, or fraction thereof, 15 cents; for giving notices and making sales, and for other services, the same fees as are allowed to constables for making sales on execution, or for the performance of like or similar services. And the Marshal is directed, whenever necessary, to provide a pen or pound in some sparsely populated part of the city, in which to keep hogs which may be seized under this ordinance.

Pen or pound
to be provided.

Resistance and
rescue prohib-
ited.

SEC. 6. Whoever obstructs, or interferes with, or hinders, or delays the City Marshal, or other officer, executing this ordinance, or any assistants or deputies of such Marshal, or other officer, or whoever shall rescue or get possession illegally of said swine from the custody of the city or its officers, or their assistants, or whoever shall break or open any pound or pen provided by the Marshal or city for keeping swine, shall be guilty of a misdemeanor, and on conviction shall pay a fine

of not less than three nor more than one hundred dollars for each offense.

SEC. 7. This ordinance being deemed necessary to secure the health and welfare of the inhabitants of the city, the officers of the city, and particularly the Marshal and health officers, are directed to see that the same is strictly observed and enforced.

Passed and approved September 24, 1866.

NOTE.—Garbage, slops, manure, &c., within the hog limits—how disposed of, see *ante* pp. 180, 181.

ARTICLE 3.

AN ORDINANCE to prevent geese from running at large within the city of Davenport.

SECTION 1. From and after the first day of March, 1867, all geese running at large in the streets and other public places, or commons and vacant lots within the city, are declared to be nuisances, and the owner or owners thereof are required to keep them confined on their own premises.

SEC. 2. Whoever violates this ordinance is guilty of a misdemeanor, and shall be fined not exceeding five dollars for each offense, and the Marshal or Health Officer or Inspector shall deal with the geese the same as is provided by ordinance (as nearly as may) "to prevent hogs from running at large."

Passed and approved September 29, 1866.

CHAPTER L.

AN ORDINANCE licensing shows, exhibitions, performances, concerts, etc.

SECTION 1. No person shall give any of the shows, exhibitions, performances, concerts, or lectures, named in the next section, for pay, and to which license fees are affixed, unless he has a license therefor, signed by the City Clerk.

SEC. 2. There shall be paid for shows, exhibitions, performances, concerts, or lectures, the following fees, to-wit:

Shows.

1st. For every show of any wild beast, or beasts, fowls or birds, or monsters, or freaks of nature, the sum of twenty dollars.

Circus, &c.

2d. For every concert, performance of horsemanship, of feats of activity, for each performance, the sum of fifty dollars; and this ordinance shall be so construed as to compel every performance exhibiting under a separate canvass, or in a separate room or hall, and charging a separate price for admission, to pay the regular license fee for such performance.

Jugglers, &c.

3d. For each performance, or attempt at performance of any feats of jugglery, sleight of hand, or necromancy, the sum of ten dollars.

Theatre.

4th. For each theatrical performance, the sum of ten dollars; for one month, fifty dollars; six months, one hundred and fifty dollars; one year, two hundred dollars.

Concerts.

5th. For every concert, the sum of ten dollars; for every gift concert, the sum of fifty dollars.

Gift concerts.

6th. For every other exhibition, performance, show, or lecture, whereby the object is profit or gain, for each performance, the sum of five dollars.

Exception.

Provided, however, that this ordinance shall not be so construed as to prevent residents of the city from giving concerts, or any person from lecturing before any regularly established literary society, institute or lyceum, without such license.

License—how obtained.

SEC. 3. Every person desiring to procure a license as aforesaid, shall pay the fee therefor to the City Treasurer, taking a receipt for the same, which shall specify for what show, or otherwise, he has paid.

Upon such receipt being produced to the City Clerk, he shall issue a license, receiving a fee of one dollar therefor from the person licensed.

Duty of Marshal.

SEC. 4. It shall be the duty of the City Marshal to see this ordinance strictly enforced, and every person

violating any of the provisions hereof, shall, upon conviction, be punished by a fine of not less than ten or more than one hundred dollars for each offense, and may stand committed until such fine and cost of prosecution are paid.

Passed and approved August 27, 1847, and August 10, 1865.

[As to reduction of rates in special cases, see note to Chapter 30.

As to gift enterprises, see Chapter 101.]

CHAPTER LI.

ARTICLE 1.

AN ORDINANCE to provide for improving the streets, alleys, public landings, and sidewalks in the city of Davenport.

SECTION 1. Whenever it shall be deemed expedient ^{Grading and macadamizing.} by the City Council to grade and pave, or macadamize, the streets, alleys, or public landings of said city, or any part thereof, said Council shall by order or resolution, direct the Street Commissioner to grade and properly prepare the same, together with the sidewalks along said streets, if any there be, for such paving or macadamizing.

SEC. 2. Said City Council may also by order or reso- ^{Duty of Engi-}
lution, from time to time, require the City Engineer to neer.
cause the gutters to be paved on any street, alley or public ground in said city, and the streets to be paved or macadamized between the gutters, said City Engineer to prepare the proper specifications for such work in the section mentioned, and after advertising for bids for the work for two weeks, shall let and contract for ^{Contracts.} the same to and with the lowest and best responsible bidder, taking from such contractor a bond with good and sufficient sureties in a penalty of double the amount to be paid for the work, for the performance thereof, within the time fixed for its completion.

Cost.

[Sec. 3, relating to width of gutters, curb-stones, &c., was repealed May 4, 1864, and is not herewith printed.]

SEC. 4. The cost of curbing, guttering, and paving or macadamizing the streets between the gutters, and all intersections of streets, shall be paid for out of the city treasury, and the grading mentioned in the first section, shall be paid for out of the road fund or road tax of the city.

Apportionment
of expense.

SEC. 5. The City Engineer shall, within ten days after the letting of any contract for paving or macadamizing any street or alley, or part thereof, make apportionment of the cost of the paving or macadamizing the street between the gutters and the setting of the curbstones, among the owners of the lots or ground fronting on the street or alley being so paved or macadamized, charging the cost thereof to the lots according to the number of feet front they contain; and the paving or macadamizing of streets in front of alleys, to be paid for by all the lot owners on the two half blocks fronting on the streets being paved, in proportion to the number of feet fronting the same, and place bills for the same in the hands of the City Marshal, and from the date of said bills the amount therein charged shall constitute a special tax, and be a lien upon the lots or ground upon which they are charged respectively, until paid.

AN ORDINANCE to amend chapter 51 of the Revised Ordinances.

Bills presented.

SEC. 6. The City Marshal shall present such bills to the owner or owners of such lots or grounds to which they are charged, or to their agents, if to be found, respectively, for payment within fifteen days from the day they were placed in his hands, and if not paid, it shall be the duty of said Marshal, at the expiration of said fifteen days, to make report to the Council, and the Council shall then direct the mode of collection, whether by action or by levy of a special tax or assessment and

Report to
Council.

sale of the property. If by action, it may be according ^{How collected.} to the provisions of sections 1068 and 1069 of the revision of 1860—these sections being hereby made part of this ordinance. If by the levy of a special tax or assessment, it shall be in the mode pointed out in the ordinance relating to sidewalks, all of the provisions of which are hereby made (so far as applicable) part of this ordinance.

The apportionment of the City Engineer is conclusive in the absence of fraud, and is *prima facie* sufficient to entitle to a recovery against the lot owner. The deed of the Marshal in case of a sale is also *prima facie* ^{Deed of Marshal.} evidence of the regularity of all previous proceedings. No omissions of officers, or other irregularity or informality shall defeat the action or the sale of property, if the work was ordered by the Council, if notice was published, if the work was not done by the party, and was done by or for the city.*

SEC. 7. The owners of lots fronting on all that portion of Front street, except of lots in block number sixty-one (61) and sixty-two, (62,) shall be taxed and pay the cost, as hereinbefore provided, of paving or macadamizing forty feet in width, of the street or public ground from the gutter on the north side of Front street.

SEC. 8. Whenever the City Council, under, or by ^{Foot crossing.} virtue of this ordinance, shall, by order or by resolution, provide for the paving or macadamizing of any street or streets, it shall be the duty of the City Engineer, at the proper time during the progress of such work, to place, or cause to be placed across said street, at proper and convenient distances apart, at all crossings for foot passengers, and in continuation of the sidewalks, a double line of stepping stones, the same to be solidly and substantially imbedded in the earth.

Passed and approved June 4, 1856, May 4, 1856,
September 24, 1866.

[As to this ordinance, see note to Chap. 48, equally applicable here.]

* Section 6, above, was passed and approved September 24, 1866.

ARTICLE 2.

AN ORDINANCE relating to the appropriation of private property for streets, &c.

Notice to be given.

SECTION 1. *Be it enacted by the City Council of the city of Davenport,* that whenever the City Council shall deem it necessary to appropriate and take the real estate of any person or persons, for the purpose of laying out, widening, straightening or otherwise improving any street or streets of said city, notice of the intention to do so shall be given to the owner or owners thereof, by publication in the corporation paper of the city for at least ten days.

Commissioners. SEC. 2. At the next meeting of the City Council after the publication aforesaid, there shall be chosen by a majority of the whole number of persons who may be entitled to vote in said Council, and by ballot, three disinterested freeholders, residents of said city, whose duty it shall be to act as commissioners, and to ascertain and assess the damages, and recompense the owners of the land so to be taken, as aforesaid, and at the time determine what persons will be benefited, and assess the damages and expense thereof, upon the real estate of those benefitted by such improvement, in proportion, or as nearly as may be, as the same are benefited.

Duty of clerk. SEC. 3. The Clerk of said city shall immediately, or as soon thereafter as practicable, notify the commissioners of their election, which notice shall name the object for which they are elected, which notice shall be served by the City Marshal.

Duty of Marshal.

Oath, notice, &c.

SEC. 4. The commissioners thus elected shall be sworn to execute their duties according to the best of their abilities, and before entering upon the discharge thereof, shall give public notice to all persons interested of the time and place of their meeting, and the object for which they are to meet, which notice shall be published in the corporation newspaper for at least ten days previous to the time named therefor. The com-

missioners may receive testimony, and may adjourn from day to day.

SEC. 5. If it shall become necessary to take any land ^{Buildings taken.} upon which any building is erected, the said commissioners shall proceed with reference thereto, as is provided by the amended charter of said city, and in case *Ante p. 47.* of the sale of any building as is therein provided, the same shall be made by the City Marshal.

SEC. 6. Within forty days from the time of their ^{Report.} appointment, the commissioners aforesaid shall make a full and complete report of their doings, which shall be by them signed and returned to the City Council, of which the Clerk of said city shall give notice, by publication as aforesaid, for ten days, to all persons interested, that unless they appear at a meeting of the Council, upon a day in said notice to be named, and object to the doings of said commissioners, the report by them made will be accepted, and their doings confirmed. The City Council shall proceed with reference to said report, as is provided in section 17 of the *Ante p. 48.* amended charter of said city, and if the report aforesaid shall be confirmed, the City Council shall proceed to levy a special tax upon the several parcels of land deemed benefited, for the several sums of money by said commissioners assessed, and immediately upon such levy, the Marshal shall proceed to collect the sums levied of the property aforesaid, and if the same remain unpaid for the period of ten days after such levy, the Marshal shall proceed to collect the same in the manner which is, or may be provided for the collection of assessments for sidewalks.*

SEC. 7. The City Council shall have power to remove ^{Removal of Commissioners.} commissioners, and from time to time appoint others in the place of such as may be removed, refuse, neglect, or be unable from any cause to serve. *Provided,* such

*This section amended as above printed September 24, 1866.

change shall not make any delay in the proceedings of the commissioners. (*Ante*, p. 49.)

Passed and approved July 1, 1857.

CHAPTER LII.

AN ORDINANCE in relation to licenses.

License not assignable.

SECTION 1. No license issued by the City Clerk under any ordinances of this city, shall be transferable, except with the consent of the City Council.

CHAPTER LIII.

AN ORDINANCE to repeal an ordinance relating to Markets, Marketing, etc.

Passed and approved May 24, 1860. (See *ante*, Ch. 36.)

CHAPTER LIV.

ARTICLE 1.

AN ORDINANCE repealing the ordinances herein revised and consolidated.

Repeal and effect of.

SECTION 1. All public and general ordinances passed prior to the present session of the Council, and prior to the passage of the ordinances herein contained, are hereby repealed, subject to the limitations and reservations, and with the exceptions hereinafter expressed.

Same.

SEC. 2. The repeal of existing ordinances shall not affect any act done, or right accrued, nor any suit or proceeding had and commenced in any civil cause, before the time when these ordinances take effect; but the proceedings in all cases shall conform as far as may be consistent with the provisions of these ordinances.

SEC. 3. No offense committed, and no penalty or ^{Rights saved.} forfeiture incurred under any ordinance repealed, shall be affected by the repeal; except that when a punishment, penalty, or forfeiture is mitigated by the provisions herein contained, such provisions shall be applied to a judgment to be pronounced after the repeal.

SEC. 4. No suit or prosecution pending when these ^{same.} ordinances take effect, for an offense committed, or for the recovery of a penalty or forfeiture incurred, shall be affected by the repeal, but the proceedings may be conformed to the provisions of these ordinances, so far as consistent therewith.

SEC. 5. These ordinances shall take effect after their publication, according to law.*

ARTICLE 2.

AN ORDINANCE in relation to the repeal of ordinances.

SECTION 1. The repeal of an ordinance shall not re- ^{Effect of repeal.} vive an ordinance previously repealed, nor does such repeal affect any right which accrued to the city, any duty imposed, any penalty incurred, nor any proceeding commenced on behalf of the city, or for its benefit, under or by virtue of the repealed ordinance.

Passed and approved September 24, 1866.

ARTICLE 3.

AN ORDINANCE to preserve to the city the right to repeal grants of special privileges.

SECTION 1. All ordinances, resolutions, or other acts <sup>Grant of special
privileges re-
pealable.</sup> of the City Council of Davenport, hereafter to be passed, adopted or done, whereby special privileges or immunities shall be granted to, or conferred upon citizens or others, shall, unless the contrary be expressed on the

* The above was published in the Revised Ordinances of February, 1857, and September, 1862.

face thereof, be subject to amendment or repeal at all times by a vote of two-thirds of all of the Council. And all such grants, unless the contrary be expressed, shall be taken to be made and accepted with reference to this ordinance and the rights which it declares and reserves to the city.

What this ordinance includes.

SEC. 2. The provisions of this ordinance are intended, among other things, to apply to all exercises, by the City Council, of the corporate powers of the city in behalf or for the benefit of individuals which have the effect to limit or abridge the right and power which the City Council would otherwise possess; and are intended to apply to grants of personal privileges as well as to grants or other acts with reference to the streets, landings and other public property which the city holds in trust for its inhabitants or the public.

Passed and approved September 24, 1866.

CHAPTER LV.

AN ORDINANCE to adopt the amendment of the city charter of Davenport, authorizing the loan of forty thousand dollars.

[This is an ordinance adopting an amendment to the city charter authorizing the city to borrow \$40,000 and issue its bonds, to pay for that amount of stock in the Chicago & R. I. R. Co. It has not been deemed essential to re-print the ordinance in full.]

Passed May 22, 1852.

CHAPTER LVI.

AN ORDINANCE to adopt the amendment of the city charter of Davenport authorizing a loan of seventy-five thousand dollars.

WHEREAS, the City Council of the city of Davenport

did, on the 7th day of July, A. D. 1853, submit an amendment to the Charter of said city to the people, to-wit: Now—

SECTION 1. *Be it therefore enacted by the City Council of the city of Davenport*, that the said city in its corporate capacity, will subscribe to, and take the sum of seventy-five thousand dollars of the stock of the Mississippi and Missouri Railroad Company, as organized by virtue of and under the laws of Iowa.

SEC. 2. That said city will borrow money for the purpose of paying said amount of stock, the sum of ^{Bonds for}_{ed.} seventy-five thousand dollars; and that the faith of the city of Davenport be, and the same is hereby pledged for the payment of the principal and interest of any amount borrowed under and by virtue of this ordinance; that the said corporation shall issue its bond for the money to be borrowed, bearing interest not exceeding ten per cent. per annum, and redeemable at any time within twenty years; that the corporate authorities aforesaid shall provide for the semi-annual payment of the interest upon said bonds and the ultimate payment of the principal; that when the same cannot be paid out of the ordinary revenue, the city authorities shall levy a specific tax for that purpose upon the taxable property of said city, and shall provide for the payment of the principal by the transfer of said stock to the holder of the bonds, or to some person or persons, or in such other way and manner as may be necessary to meet the payment of said principal as well as preserve the good faith of the city of Davenport.

Therefore, we do hereby certify that the foregoing amendment to the city charter was unanimously passed by the City Council and adopted by the legal voters of said city, and is now here approved, this 9th day of July, A. D. 1853.

JOHN N. BOYD, Mayor.

Attest: RICHARD K. ALLEN, City Clerk.

I certify that the foregoing amendment passed and

approved on the 9th day of July, A. D. 1853, was duly posted and published according to the directions of the City Council and the laws governing the same.

RICHARD K. ALLEN, Clerk.

[NOTE.—United States Supreme Court decisions sustaining validity of bonds of cities to railroad companies : 21 How., 539; 23 id., 381; 24 id., 287, 365; 22 id., 364; 1 Wallace, 88; id., 291; id., 384, 393; id., 175; id., 272.

State decisions in Iowa denying power of cities to subscribe to stock of railroads : 13 Iowa Rep., 388; 14 Iowa Rep., 47; id., 107, 15 Iowa, 385; id., 436.

CHAPTER LVII.

AN ORDINANCE for the suppression of houses of ill-fame, and for the punishment of vagrants and prostitutes.

House of ill-fame.

SECTION 1. That all houses of ill-fame and houses of assignation where men and women resort for the purpose of prostitution, are hereby declared public nuisances, and the Marshal or Chief of Police are ordered to abate the same as provided already by ordinance.

Keeping of, &c. SEC. 2. If any person shall be guilty of keeping or maintaining a house of ill-fame, prostitution, or shall be an inmate of, or in any way connected with, or in any way contribute to the support of any house of ill-fame, prostitution, or assignation, or knowingly own or be interested as proprietor or landlord of any such house, such persons so keeping, interested in, contributing to the support of, visiting or inmate of any such house, shall be punished by a fine not less than ten dollars nor more than fifty dollars and costs of prosecution, and they shall stand committed until such fine and costs be paid.

Penalty.

Inmates defined.

SEC. 3. Every person found in any house of ill-fame, prostitution or assignation, whether they be male or female, shall be considered an inmate within the meaning of the second section of this ordinance, and their presence in any such house or houses at any hour of the day-time or night, shall be *prima facie* evidence that

they were there for the purpose of prostitution, and that they are inmates of a house of ill-fame within the meaning of said section.

SEC. 4. Any person able to work and support himself in any honest and respectable calling, who shall be found loitering or strolling about any street, alley, common, or any public or private place within the city, not having any regular or lawful business, or who shall occupy for the purpose of lodging, or any other purpose, any barn, shed, shop, or place other than such as kept for that purpose, without permission of the owner or party entitled to the possession thereof, or who shall lead an idle, immoral, or profligate course of life, shall be deemed a vagrant, and upon conviction thereof before any court having jurisdiction, shall be fined in a sum not less than five nor more than fifty dollars, and if a male, as a part of said judgment, unless said fine shall be paid, he may be sentenced to labor on the streets under the direction of the Street Commissioner one day for each dollar of fine unpaid, and in default thereof shall be committed to the county jail, and confined there until such fines and costs be paid, or he be discharged by order of the Mayor.

SEC. 5. If the owner, or keeper, or occupant of any house suspected of being a house of ill-fame, prostitution or assignation, shall refuse to permit the Chief of Police or any other executive officer acting under the order of the city government to enter the same, it shall be lawful to any such officer to enter by force, by breaking the door, or otherwise, with or without warrant, and be liable to no punishment or damages for so doing.

SEC. 6. Upon proof being made before any magistrate trying the case, that any house or tenement in the city is used as a house of ill-fame, prostitution or assignation, the Court shall issue a precept to the Chief of Police, or any member of the same, or any other executive officer, to close said premises, the same to be left closed until proper assurance shall be given by the

owner thereof to the Court or Mayor of the city, that it shall not be used again for the purpose.

Second offense. SEC. 7. Upon conviction of any person under any provision of this ordinance a second time for the same offense, the punishment shall be imprisonment by close confinement twenty days, and upon a third conviction by close confinement for not less than twenty nor more than thirty days.

Passed and approved June 16, 1858.

NOTE.—Charter gives city power to pass ordinances of this character. See, *ante* pp. 39, 40.

CHAPTER LVIII.

AN ORDINANCE regulating the sale of intoxicating liquors.

[Repealed September 24, 1866, and hence not herewith printed.]

CHAPTER LIX.

*AN ORDINANCE regulating the sale of lumber in the city of Davenport by transient dealers.**

License—when required.

SECTION 1. That no person or persons not a citizen of Davenport, shall put or place upon the public levee, or on the shore of the Mississippi river within the limits of the city, any sawed lumber, shingles, boards, planks, joist, studding, or any other lumber manufactured or sawed, for the purpose of selling the same at retail, nor shall such person or persons, not a resident of the city of Davenport, sell at retail at any other place within the limits of said city, without first procuring a license therefor, as provided in section second, under a penalty

*The right "to license, regulate and tax" transient dealers is expressly given by the charter. Art. 5. Sec. 2. *ante*, p. 39.

of not less than ten nor more than twenty five dollars for each offense.

SEC. 2. Any person who shall land or place upon the levee, within the limits of the city, any sawed lumber, shingles, boards, planks, joist, studding, or any other lumber, manufactured or sawed, with the intent to offer or sell the same at retail, shall within six hours of the time of landing or placing such lumber on the levee, apply to the City Clerk of this city for a license to sell such lumber at retail, and shall pay the said Clerk the sum of three (3) dollars for every thousand feet of lumber so landed for sale at retail, and the further sum of one dollar for his fees in issuing such license.

SEC. 3. Any person applying for such license shall present the City Clerk with a statement in writing, and under oath, of the kind and quantity of the sawed lumber he or they desire to sell under said license, and the City Clerk shall insert the quantity of lumber in the license to be issued.

SEC. 4. Any person not a resident of the city, who complies with the foregoing sections of this ordinance, shall have the right to land any raft of sawed lumber upon any portion of the public levee, except that portion included between Rock Island and Harrison streets, for the purpose of selling the same in any quantity at retail. *Provided*, that this ordinance shall not be so construed as to give the right to any person of establishing a permanent lumber yard upon any portion of the public levee within the city. *Provided, further*, that no lumber shall be put or placed at the foot of any street leading north from the Mississippi river so as to obstruct the free access to the river for carts, drays, wagons, teams and other vehicles. Any person violating any of the provisions of this section, in so obstructing any streets with lumber, shall forfeit and pay a fine of twenty dollars for each offense.

SEC. 5. By the term "selling lumber at retail," as used in this ordinance, shall be understood the selling

of such lumber in quantities less than the whole quantity so landed or placed upon the levee.

Fraud.

SEC. 6. If any person shall make any false inventory of the landing of the lumber which he desires to sell, when applying for his license, he shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, forfeit and pay a fine of not less than twenty-five dollars for each offense.

Passed and approved July 21, 1858, and afterwards amended to read as above printed.

CHAPTER LX.

AN ORDINANCE.

Firemen exempt from poll-tax.

That each member of the Fire Department of this city shall be exempt from the payment of any city poll-tax assessment as well as for the year 1858 as for future years.

Passed and approved July 21, 1858.

CHAPTER LXI.

AN ORDINANCE licensing and regulating Pawn-brokers.

Pawnbrokers licensed.

SECTION 1. The Mayor, by and with the consent of the City Council, may, from time to time, grant license under his hand and seal, to such persons as shall produce to him satisfactory evidence of their character and integrity, to exercise or carry on the business of a pawnbroker. No one without such license shall carry on such business.*

License fee.

SEC. 2. Every person receiving such license shall pay the sum of fifty dollars in advance, for the use of the city, and all licenses be made out for one year.

* Amended as above printed September 24, 1866.

SEC. 3. Every person so licensed shall, at the time ^{Bond.} of receiving such license, execute a bond with two sufficient sureties, to the city of Davenport, in the penalty of five hundred dollars, conditioned for the due observance of the ordinances of this city, now or hereafter enacted during the continuance of such license, and any person aggrieved by the acts of any pawnbroker, may sue upon such bond and recover such damages as he shows himself entitled to.

SEC. 4. Every pawnbroker shall keep a book, in ^{Books and duties.} which shall be fairly written, at the time of such loan, an accurate account and description of the goods, article or thing pawned, the amount of money loaned thereon, the time of pledging the same, the rate of interest to be paid on such loan, the time when the loan becomes payable, and the name of the person pawning or pledging the said goods, article or thing.

SEC. 5. Every pawnbroker shall at the time of each ^{Same.} loan, deliver to the person pawning any article of goods, a memorandum or note, signed by him or her, containing the substance of the entry required to be made in his or her book, by the last preceding section; and no charge shall be made by any pawnbroker for such entry, memorandum or note.

SEC. 6. Said books of any pawnbroker shall, at all ^{Books inspect- ed.} reasonable times, be opened to the inspection of the Mayor, Police Magistrate, Marshal of this city, or any or either of them, or to any person who shall be duly authorized in writing for that purpose, by any or either of them.

SEC. 7. Every pawnbroker who shall violate or neg- ^{Penalty.} lect to refuse to comply with any or either of the provisions of this ordinance, shall, for every such offense, forfeit and pay the sum of twenty-five dollars, to be recovered for the use of the corporation, and his license may be revoked in the discretion of the Mayor.

SEC. 8. No pawnbroker shall sell any pawn or ^{Sales regulated.} pledge until the same shall have remained two months

in his or her possession, after the payment of the pawn loaned becomes due, and all such sales shall be at public auction, and not otherwise unless by consent in writing of the party pawning the goods, and then not until after six days notice in writing has been given, by posting up three written notices in three public places in this city; and when any property is pledged exceeding the value of fifty dollars, such notice shall be by publication in some newspaper printed in said city, for the time above specified.

Surplus.

SEC. 9. All surplus money, if any, arising upon such sale, after deducting costs and expenses of sale, shall be paid over to the owner of the article or thing there sold, or be paid into the city treasury for the use of such persons.

Passed and approved August 19, 1858.

†The power "to license, tax and regulate pawnbrokers" is expressly given by the charter, Art. 5, Sec. 2. *Ante*, p. 39.

CHAPTER LXII.

*AN ORDINANCE relating to deduction of salaries of city officers during their absence from duty.**

Absence or neglect.

SECTION 1. The City Clerk and City Treasurer be and they are hereby authorized and directed to deduct from the salaries of city officers for absence and neglect of duty, such sums of money as would be equal to the proportion of their respective salaries accruing during such absence or neglect of duty.

Passed and approved November 3, 1858.

* As to salaries generally, see Chapter 17, *ante*, p. 136.

CHAPTER LXIII.

AN ORDINANCE providing for a transfer of the Engine House on Brady street from the Fire Department.

[Not re-printed because of no general interest.]

CHAPTER LXIV.

AN ORDINANCE providing for the issuing of dray, wagon and coach licenses.

SECTION 1. Hereafter all licenses issued by the Clerk for drays, wagons and coaches shall be made to terminate with the 31st day of December of each year.

Passed and approved January 5, 1859.

CHAPTER LXV.

AN ORDINANCE changing and defining the boundaries of the several wards of the city of Davenport, and for other purposes.

SECTION 1. All that portion of said city which lies west of Warren street, and of a line running due north therefrom to the corporation line, shall constitute and be denominated the First Ward.

SEC. 2. That all of that portion of said city which lies east of the First Ward as herein created, and west of Western Avenue, shall constitute and be denominated the Second Ward.

SEC. 3. That all of that portion of said city which lies east of the Second Ward as herein created, and west of Harrison street, shall constitute and be denominated the Third Ward.

SEC. 4. That all of that portion of said city which

lies east of the Third Ward as herein created, and west of Perry street, and of a line running due north therefrom to the north line of the corporation, shall constitute and be denominated the Fourth Ward.

5th Ward.

SEC. 5. That all of that portion of said city which lies east of the Fourth Ward as herein created, and west of Farnam street, shall constitute and be denominated the Fifth Ward.

6th Ward.

SEC. 6. That all of that portion of said city which lies east of the Fifth Ward as herein created, shall constitute the Sixth Ward.

Aldermen elected.

SEC. 7. That at the municipal election of said city, after the taking effect of this ordinance, there shall be elected in said city six Aldermen, one from each Ward as herein created, to serve for the term of two years.

Same.

SEC. 8. That the term of office of the Aldermen heretofore elected, shall not be affected by the passage of this ordinance, but are hereby declared eligible, and shall serve as Aldermen of the several Wards of which they are now residents, until the expiration of their term, anything herein contained to the contrary notwithstanding.

Repeal clause.

SEC. 9. All ordinances heretofore passed, fixing and defining the boundaries of the Wards of said city, and other ordinances or parts of ordinances which are inconsistent and in conflict with this ordinance, are hereby repealed.

Passed and approved February 16, 1859.

CHAPTER LXVI.

AN ORDINANCE abolishing the office of City Physician.

City Physician abolished.

SECTION 1. The office of City Physician for the city of Davenport is hereby abolished.

SEC. 2. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Passed and approved February 16, 1859.

CHAPTER LXVII.

AN ORDINANCE to pay Strong Burnell one hundred dollars.

[Omitted.]

Passed and approved February 16, 1859.

CHAPTER LXVIII.

AN ORDINANCE relating to the collection of \$32 delinquent sidewalk assessment on Lot 1, Block 3, Motie's Addition to the city Davenport.

[Omitted because of no general interest.]

Passed and approved March 16, 1859.

CHAPTER LXIX.

AN ORDINANCE relating to policemen.

(Repealed by general ordinance relating to policemen.
See Chap. 43.)

Passed and approved July 3, 1861.

CHAPTER LXX.

AN ORDINANCE relating to the fees of Police Magistrate.

SECTION 1. That in all proceedings before the Police ^{Fees—who to} Magistrate to enforce the ordinances of the city of ^{pay.} Davenport, when the costs cannot be made of the de-

fendant, on execution, and in all cases where the information is made by a city officer, under the ordinances, the Police Magistrate shall be paid by the city of Davenport, the same fees as are paid to Justices of the Peace by the county in criminal cases.

SEC. 2. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Passed and approved July 3, 1861.

CHAPTER LXXI.

AN ORDINANCE to vacate the alley in Block 91.

Alley vacated.

SECTION 1. The public alley laid out and recorded in block number ninety-one (91) in Le Claire's addition to said city be and the same is hereby vacated.

Passed and approved April 10, 1861.

CHAPTER LXXII.

AN ORDINANCE fixing the time for holding regular meetings of the City Council.

Time of holding regular meetings.

SECTION 1. After the first meeting of the City Council in December, 1866, the regular meeting of the City Council of the city of Davenport shall be held upon the first and third Wednesday of each and every month, commencing at $7\frac{1}{2}$ o'clock P. M.

SEC. 2. All ordinances in conflict with the above are repealed.

Passed and approved September 24, 1866.

CHAPTER LXXIII.

AN ORDINANCE requiring the use of bells by persons sleighing in the city.

SECTION 1. *Be it enacted by the City Council of the*

city of Davenport, That it shall be unlawful for any ^{Bells required.} person or persons to drive sleighs, cutters, or similar vehicles, in the streets of said city without having bells attached to either horse or vehicle.

SEC. 2. Any person or persons violating this ordinance shall, upon conviction thereof before the Mayor, Police Magistrate, or some Justice of the Peace, pay a fine of one dollar and cost for each and every such offense, and stand committed until paid.

SEC. 3. It shall be the duty of the City Marshal to ^{Marshal's duty.} arrest all persons violating this ordinance, and forthwith bring them before either of the aforementioned officers for trial.

Passed and approved January 2, 1861.

CHAPTER LXXIV.

AN ORDINANCE to prohibit coasting or sledding on Brady, Harrison, and other streets.

SECTION 1. All persons are hereby prohibited from ^{Coasting.} coasting or sledding down Harrison, Brady, Main, Gaines and Warren streets in said city.

SEC. 2. All persons violating this ordinance shall be ^{Penalty.} fined not less than one dollar nor more than five dollars for every such offense.

Passed and approved Jan. 2, 1861, and Jan. 1, 1862.

CHAPTER LXXV.

AN ORDINANCE relating to the correcting of errors in the Assessor's Book.

[Incorporated in Revenue ordinance.]

CHAPTER LXXVI.

*AN ORDINANCE to remove snow and ice from the sidewalks.**

Sidewalk to be cleaned.

Penalty.

SECTION 1. The occupant of each and every basement or building in said city, fronting upon any street or sidewalk which is of plank, stone, brick, iron, or other materials, or the owner of any unoccupied lot fronting as aforesaid, shall clear the sidewalk in front of such basement, building or unoccupied lot, as the case may be, of snow and ice, by nine o'clock in the forenoon of each day, and cause the same to be kept clear of said snow and ice; and every person omitting to clear off said sidewalks by the hour in the forenoon above named, or to keep the same free from snow and ice for the space of twenty-four hours after the snow has fallen, or accumulated, shall forfeit and pay the sum of not more than ten dollars in cash; and the like penalty of two dollars for every twelve hours such sidewalk shall remain so encumbered after notice from the Mayor, any Alderman, or any police officer of said city.

Passed and approved March 5, 1862. Amended September 24, 1866.

CHAPTER LXXVII.

AN ORDINANCE providing for the collection of road poll tax, and for other purpose.

Duty of Street Commissioner defined.

SECTION 1. It shall be the duty of the Street Commissioner of the city of Davenport, under the direction of a committee to be appointed by the City Council, to superintend all repairs and improvements upon the streets and alleys in said city, ordered by the City Council, (or in the judgment of the said Street Commissioner necessary to be made,) *provided*, that in all

* See *ante*, pp. 89, 90, Notes to City Charter.

improvements not made by order of the Council, the Street Commissioner shall confer with and secure the concurrence of the committee aforesaid, before proceeding to make such repairs or improvements.

SEC. 2. *Be it further enacted*, that hereafter, in each year, upon the election of Street Commissioner, it shall be the duty of the City Council to furnish the Commissioner with an estimate of the probable amount of money which will be during such year subject to appropriation for road purposes, beyond which estimate the Street Commissioner shall in no event incur liability on the part of the city, for or on account of road work done under his direction. Council to furnish him estimates. Limit on his power.

SEC. 3. The Street Commissioner shall in no case issue any certificate, or other evidence of liability, binding, or purporting to bind the city, for or on account of any road work done by his direction, under a penalty of not less than ten dollars nor more than one hundred dollars for any violation of this provision. Cannot issue certificates, &c.

SEC. 4. At each and every regular meeting of the City Council during the year, the Street Commissioner shall make a report of his doings, which report shall specially state the amount of money expended by him, or for the expenditure of which the city has become liable, by reason of any labor upon the streets, alleys, etc., under his direction, which report shall also show—

- 1st. The name of each person so employed by him. What report shall show.
- 2d. The time which each person performed labor.
- 3d. The amount due to each person for such labor.
- 4th. Upon what street or alley the labor of such person was performed.

The indebtedness so created in favor of the several persons who have so performed labor, shall be paid out of the Road Fund, by order of the Council, to the persons aforesaid, the Treasurer taking a receipt therefor.

SEC. 5. No money shall be expended out of the general treasury for improvements or labor upon the streets and alleys, until all the collectable street tax has Out of what fund payment to be made

been collected and expended, without a special order of the Council, directing the improvement and expenditure for which such payment out of the general treasury is made.

Who liable to labor on streets.

Commutation.

Penalty, &c.

Who liable to work.

General notice.

Failure to appear.

SEC. 6. *Be it further enacted*, that every male inhabitant of the city of Davenport, over twenty-one years of age and under the age of fifty years, is hereby required to labor three days in each year upon the streets and alleys of the city, at such time and place, and in such manner as the Street Commissioner shall direct; but any person may, at his option, pay at the rate of \$3½ cents per day, for every day he shall be so bound to labor, providing such payment be made on or before the first day of the three days upon which he may be notified by said Commissioner to labor. And in default of payment, as aforesaid, the sum of three dollars may be collected of such person, with costs and penalty.

SEC. 7. All persons who shall reside in the city at any time for thirty successive days, shall be deemed liable to pay the road tax provided for herein, unless he has already paid a road poll tax for the same year in some district where he was at the time a resident, and exhibit a receipt from the proper officer to that effect.

For the purpose of enabling the Street Commissioner to carry out the provisions of this ordinance, he is hereby authorized and required to publish, or cause to be published, in the official or some other newspaper of the city, a general notice, to all persons liable to pay poll tax, that their services are required to perform labor on the streets or alleys, at such place or places as he may designate, within the next ten (10) days from the date of publication of said notice, during which time they may appear in person or substitute. In case they should fail so to appear within the time mentioned, as aforesaid, those who are delinquent are required to call upon the Collector of the city, and pay him the sum of two dollars and fifty cents in cash, otherwise they will be liable to pay the sum of three dollars and costs, and

one dollar for each day they are delinquent, and to be sued for the same.

Said notice may be in this form, to-wit:

STREET NOTICE.

STREET COMMISSIONER'S OFFICE, }
City of Davenport. }

Each male inhabitant of the city of Davenport over ^{Form of general notice.} 21 years of age and under 50 years of age, is hereby notified that he is required, within ten days from this date, to report himself to the Street Commissioner, or send a substitute to labor upon the streets and alleys in the said city for the space of three days, at such place or places as the Street Commissioner may designate, and in default thereof he is liable to pay the sum of three dollars and costs, and one dollar per day for each and every day, not exceeding ten days, he shall fail, neglect or refuse to comply with this notice.

Dated the day of, 186..

.....
Street Commissioner.

No personal demand or notice is necessary. And the ^{No personal de-}mand. city shall recover in any suit instituted under this ordinance if it shows, 1st, That the defendant is a male in-^{Suit by city.} habitant of the city; 2d, That the general notice required by section seven (7) of this ordinance was published; 3d, That the defendant did not, as therein required, report to and notify the Commissioner that he was ready for work, or if he did not work when and as required by this ordinance and the said Commissioner. If the defendant is over or under the required age, this ^{When it may recover.} is a defense he must establish. No technicality or informality shall defeat the action of the city. And the ^{Penalty, &c.} delinquent is liable for the three dollars, and for costs and for penalty at the rate of one dollar per day for each day's delinquency, not however exceeding in all ten days.

SEC. 8. It shall be the duty of the Street Commis- ^{List of delin- quents.} sioner, as soon as practicable after the expiration of time

Publication of.

mentioned in the notice specified in the last section, to make two lists of all delinquents, one of which lists shall be handed to the City Collector ; the other list the Street Commissioner shall cause to be published in one or more of the daily newspapers of the city, one or more times. Said notice may be in the following form, and no misprint or mistakes in the name of the delinquent shall effect the validity of said notice.

STREET TAX.—NOTICE TO DELINQUENTS.

STREET COMMISSIONER'S OFFICE, }
City of Davenport. }

Form of notice
to delinquent.

Notice is hereby given that suits will be commenced against the persons hereinafter named, for the street tax due from them, and the penalty, unless the sum of two dollars and fifty cents be paid to the City Collector on or before the ... day of

[Here insert the names of delinquents as accurately as possible.]

Dated this ... day of 186 .

.....
Street Commissioner.

Penalty if party
neither works
or pays.

All persons who neglect or refuse to make such payment shall pay three dollars and the costs of advertising, and all other costs, and shall also forfeit and pay the sum of one dollar per day for each day not exceeding ten days, which they have so neglected, failed, or refused to work upon the road after the notice given, which is required by section 7 of this ordinance.

City Attorney's
duty.

The names of all persons who shall fail to labor or to pay, shall, from time to time, be given by the Street Commissioner to the City Attorney, and it shall be his duty faithfully and diligently to prosecute all persons who shall subject themselves to suit under the provisions hereof. The complaint for a violation of this ordinance may be in the following form :

Form of com-
plaint.

STATE OF IOWA,
 CITY OF DAVENPORT, plaintiff, } Before Police Magis-
 vs. } trate of said city, (or
 Defendant. } Mayor, as case may
 be.)

The said plaintiff alleges that the said defendant is a male inhabitant of said said city over the age of twenty-one years, and liable by the charter and ordinances of said city to labor on the streets and alleys of said city three days in each year; that the Street Commissioner of said city has duly published, for the present year, a notice to all persons liable to do so, to appear and labor on said streets and alleys; that the defendant failed to appear and labor as required, or to send a substitute; that the time limited in said notice in which it was defendant's duty to have appeared and labored, or to have sent a substitute as aforesaid, expired on the . . . day of . . . A. D. 186 . By means of the premises aforesaid, the defendant is liable to pay to the city of Davenport the sum of three dollars, also costs, and also one dollar per day for the space of . . . days, to which the defendant is liable in consequence of failing to comply with the said notice of the Street Commissioner, and to perform labor upon the streets and alleys of said city; for all which the city prays a judgment against the defendant.

.....
City Attorney.

If the city recovers judgment, execution shall issue Execution. and may be levied upon any property whether exempt from execution in ordinary cases or not. The officer having the writ must first seize property not exempt, if it can be found.

SEC. 9. It shall be the duty of the City Clerk, under the direction of the Committee on Finance, to cause to be printed appropriate receipts and notices for the Street Commissioner and Collector. And it shall be the further duty of the Clerk to furnish the Street Commissioner a list of all persons in said city required by this ordinance to perform labor upon the streets and alleys therein.

SEC. 10. The Street Commissioner shall issue receipts to all persons who shall faithfully labor upon the streets and alleys under his direction, for three days,

his receipt in full for labor upon the streets and alleys; *provided*, that the Street Commissioner shall receipt to no person for money in lieu for labor, under the penalty of ten dollars for any violation of this proviso.

City Collector
to receipt for
money.

It shall be the duty of the City Collector, upon the payment of the aforesaid sum, in accordance with the notice, to any person required to labor upon the streets and alleys, as aforesaid, to issue to such person a receipt for the same, specifying it to be in full satisfaction for all labor due from such individual upon the streets and alleys for the year for which such payment is made, which receipt shall be a full discharge to such person for all the labor due from such individual upon the streets and alleys for the year mentioned in said receipt.

And it shall be the duty of the City Collector to open an account with the road fund, and to carry all moneys received by him upon that account, to the credit of such fund, and to specify therein the persons from whom such money is received. And it shall be the further duty of said Collector to pay over such funds to the City Treasurer and take his receipt for the same, and said Treasurer to keep the same as a distinct and separate fund.

Passed and approved September 25, 1866.

[*NOTE.*.—This ordinance is clearly warranted by the provisions of the City Charter (Art. 8 and amendments thereto) which give the city power "to provide for the collection" of this tax "by ordinance." The Charter fixes the penalty for failure to work when notified. The above ordinance repeals the ordinance of April 20, 1859, giving the party the right to work in his own ward. He must now work as directed by the Street Commissioner.]

Power given by Charter to levy road poll taxes and pass ordinances to enforce. See *ante*, pp. 51, 53.

CHAPTER LXXVIII.

AN ORDINANCE to amend an ordinance providing for the appointment and election of officers by the Council of the city of Davenport.

SECTION 1. That whenever the City Council shall

fail to appoint or elect an officer on the day provided for such election or appointment, the Council shall have the power to appoint and elect such officers at any subsequent regular meeting of the Council.

SEC. 2. This ordinance shall take effect from and after its publication according to law.

NOTE.—As to vacancies, see Chap. 106.

CHAPTER LXXIX.

AN ORDINANCE providing for a loan of two hundred thousand dollars.

SECTION 1. WHEREAS, at a regular meeting of the Preamble. City Council of the city of Davenport, held on Wednesday, the sixth day of May, A. D. 1857, the following, among other proceedings, were had, to-wit:

The majority report of the committee to whom was referred the resolutions to raise money by loan, was read, and on motion of Ald. Guy, the report adopted.

The committee to whom was referred the preamble and resolutions offered by Ald. Barrows, having discharged the duties assigned them, beg leave to offer the following substitute:

WHEREAS, It is deemed necessary by the City Council of the city of Davenport, that said city should be provided with a city hospital, to cost about \$15,000, a city hall to cost about \$35,000, and whereas, it is deemed necessary to raise by loan not less than \$50,000, in addition to the amount already appropriated, and not yet expended, for the purpose of supplying the city with pure water, and whereas, it is deemed necessary by the City Council to raise by loan not less than \$100,000, for grading, guttering and otherwise improving the streets of the city; therefore be it

Resolved, That on the 16th day of May, A. D. 1857, Resolution. polls shall be opened in the different wards of the city, for the purpose of submitting the following question:

Whether the City Council shall be authorize to raise by loan the sum of \$200,000, for the purpose of purchasing a city hospital and city hall, for the erection of suitable water works, and for the general improvement of the streets.

The question shall be voted upon in the following manner:

Those in favor of the loan shall vote "for the loan," those opposed, "against the loan."

Polls to be opened at 9 o'clock, A. M., and close at 6 o'clock, P. M. The places of holding said election shall be as follows:

[Here follows list of places and of the Judges of the election.]

The Judges of said election shall canvass the votes so cast, make a certificate of the result thereof, and return the same under seal to the City Council at its next regular meeting thereafter.

If said loan shall be approved by a majority of the voters at said election, the City Council shall immediately proceed by ordinance to authorize the Mayor to issue bonds for the sum so voted, the bonds to be negotiated as fast as they may be needed for the before mentioned purposes, the said bonds shall be each for the sum of \$500, signed by the Mayor and Clerk, payable, the principal at the expiration of twenty years, and the interest thereon semi-annually, interest and principal payable in the city of New York.

Provided, that said ordinance shall so provide that no bonds shall be sold for less than the par value thereof, and shall bear interest at a rate not exceeding ten per cent. per annum.

(Signed,) .

J. H. SEARS /
JOHN FORREST, { Committee.

And whereas, in accordance with the provisions of said resolution, there was, on the 16th day of May, A. D., 1857, an election held in the several wards of said city, and as it appears by the certificates of the Judges thereof, there were in all in said election eight hundred

and seventeen (817) votes, of which whole number there were cast "for the loan," six hundred and seventy-four votes, and "against the loan," one hundred and fifty-three votes, being a majority for said loan of five hundred and thirty-one votes therefor.

SEC. 2. *Be it further enacted*, that the Mayor of said city be and is hereby authorized to prepare, or cause to be prepared, bonds of the city of Davenport, each for the sum of five hundred dollars, and in all to the amount of the aforesaid sum of two hundred thousand dollars, the same to be signed by the Mayor and Clerk of said city, and sealed with the seal thereof, payable, the principal at the expiration of twenty years from the time when the same shall be issued, and the interest (which shall not exceed ten per cent. per annum) semi-annually. To said bonds shall be attached coupons for the interest as aforesaid, which, with the said principal sum of two hundred thousand dollars, shall be payable in the city of New York.

SEC. 3. *Be it further enacted*, that the Mayor of said city, or his successor in office, shall, whenever from time to time the aforesaid sum, or any part thereof, is or shall be required for the uses and purposes hereinbefore mentioned, negotiate and dispose of the bonds so prepared, *provided, however*, that in no case shall said bonds, or any part thereof, be sold at a less sum than the par value thereof.

SEC. 4. The faith of the city of Davenport is hereby pledged for the payment of said principal sum of two hundred thousand dollars, and the interest thereon, as hereinbefore provided, for which payments, both of the principal sum and interest thereon, it shall be the duty of the City Council to provide, and if at any time, from the ordinary sources of revenue, sufficient funds for the payment of said interest, as the same becomes due, or any part thereof, or for said principal sum as the same becomes due, or any part thereof, shall not be received, then it shall be the duty of the City Council of said city

to levy a special tax for the purposes aforesaid, upon the taxable property of said city.

CHAPTER LXXX.

AN ORDINANCE to widen the sidewalk on the north side of Front street, between Brady and Harrison streets, and for other purposes.

Width of sidewalks.

SECTION 1. The sidewalk on the north side of Front street, between Brady and Harrison streets, is established at sixteen feet in width instead of twelve feet.

Passed and approved May 25, 1857.

Width of certain sidewalks.

SEC 1. The sidewalk on the north side of Second street, between Harrison and Ripley streets, is established at fourteen feet in width.

Passed and approved August 26, 1857.

SEC. 1. The sidewalks on each side of Harrison street, north of Eighth, be and the same are hereby established at ten feet in width.

SEC. 2. That the gutters on each side of Harrison street, south of Eight street, be laid down eight feet in width instead of six feet in width, as now provided.

SEC. 1. The sidewalk on the south side of Second street, between Ripley and Perry streets, be, and the sidewalk on the north side of said Second street, between Main and Perry, be, and they are hereby established at fourteen feet in width.

Passed and approved September 9, 1857.

SEC. 1. That the sidewalks on the east of Main, between Third and Fourth streets, and on the south side of Fourth, between Main and Brady, be and they are hereby established at fourteen feet in width.

Passed and approved September 23, 1857.

CHAPTER LXXXI.

AN ORDINANCE providing for the collection of the tax for macadamizing a part of Perry street.

[Omitted because of no general application.]

Passed and approved September 16, 1857.

CHAPTER LXXXII.

AN ORDINANCE to vacate certain roads in Mitchell's Additions to the city of Davenport.

SECTION 1. That the public roads formerly laid out vacate roads. from the west end of Sixth street to the western boundary line of the original town of Davenport, and running up the bluff near G. C. R. Mitchell's present residence, be and the same are hereby vacated so far as said roads run through blocks No. 12, 15, 20 and 21 of said Mitchell's second and third additions to the city of Davenport, and that the public road known and commonly called the Telegraph Road, be and the same is hereby vacated so far as the same runs through blocks 19, 20 and 21, of Mitchell's said third addition to the city of Davenport.

Passed and approved October 7, 1857

CHAPTER LXXXIII.

AN ORDINANCE permitting Lowrey, Thomas & Co. to construct a switch and side track, to connect the M. & M. Railroad with certain lots.

[Omitted because of no general interest.]

CHAPTER LXXXIV.

AN ORDINANCE to improve and preserve the navigation of the Mississippi River within the limits of the city, and relating to the public landing in said city and for other purposes.

Be it enacted by the City Council of the city of Davenport:

STEAMBOAT LANDING DEFINED.

Steamboat landing defined.

SECTION 1. All the public landing embraced between Rock Island street on the east, and Harrison street on the west, shall be kept exclusively for the use of steam-boats and barges; and no raft shall be allowed to make use of such part of said landing. No steamboat shall be allowed to land at any other place within the limits of the city of Davenport, and no barge shall be allowed to land at any other place within the limits of the city of Davenport.

RAFT, &c., LANDING.

Raft, &c., landing and wharf defined.

SEC. 2. All the public landing between Harrison and Warren streets, and between the railroad bridge and Rock Island street, is hereby designated and set apart as a public wharf for the landing of rafts, flat-boats, and other articles and water craft; and the Wharf Master shall, as hereinafter directed, cause the space hereinbefore specified, or so much, or such part thereof as may be necessary, to be put into suitable condition for the landing of rafts, flatboats and other articles and water craft; and all such rafts, boats and water craft shall land within the limits aforesaid and at the places thus prepared and designated by the Wharf Master, and not elsewhere.

Cannot evade wharfage.

If steamboats, other boats or rafts shall, contrary to this ordinance, land elsewhere than as herein prescribed, they are nevertheless liable to pay wharfage according to the terms of this ordinance. (See Sec. 14.)

SEC. 3. Upon the landing, mooring or securing, of any boat, water craft, raft, logs, lumber, stone, or other materials, between the points above designated, except as above provided, it shall be the duty of the wharf master to cause a notice of removal of the same, to be served on the person or persons so landing such craft or materials.

SEC. 4. If no person shall be found on board of such craft, or materials, on whom to serve the notice aforesaid, then the wharf master shall cause the like notice, in writing, to be placed on or near such craft or materials, for the removal thereof, and if the same is not removed within twenty-four hours thereafter, the wharf master shall remove the same above or below the district aforesaid, and the property, or a sufficient amount thereof, be sold to pay the expenses of such removal. *Provided,*

however, that whenever property is so sold, the wharf master shall give at least three days notice thereof, by posting written notices of sale in three or more public and conspicuous places in said city, stating the time and place of sale, and for what reason sold. When sold, it shall be at public outcry, to the highest bidder for cash, and if the amount received should exceed the costs attending the advertising, sale, and the amount of the fine, it shall be paid into the City Treasury, and be subject to the order of the owner thereof.

SEC. 5. No person shall draw out, and let remain on the landing, in front of any portion of the city, for a longer time than herein allowed, any lumber, logs, timber, building material, or any other obstructions.

SEC. 6. No person shall remove any gravel, stone or earth, from the landing or bank of the Mississippi River, in front of said city, and any person violating this provision shall pay a fine of not exceeding ten dollars for every load so taken.

SEC. 7. The office of wharf master is hereby created; who shall be appointed by the Mayor, by and with the consent of the Board of Aldermen, and he shall hold his office for one year.

Bond.

SEC. 8. The wharf master shall, before entering upon the duties of his office, take the oath and give a bond, as required of city officers, and said bond shall be in the sum of one thousand dollars.

Duties.

SEC. 9. It shall be the duty of the wharf master to take entire charge of the City wharf landing, and to collect all wharfage as provided by this ordinance. He shall keep two books, one of which shall be ruled, having separate columns for boats, rafts, lumber, sash, shingles, pickets, sand, lime, posts, rails, wood, and miscellaneous articles, the name of owner, the amount of articles landed, the amount of cash received for wharfage. The other book shall be a cash and receipt book, showing all cash received by him. He shall, under the direction of the Committee on Public Grounds, provide, at the expense of the city, suitable posts and ring bolts for boats and rafts to make fast to, and keep in repair, and shall charge the city with the expense thereof. And all articles brought to the city and placed on the landing shall be placed where and in such manner as the wharf master shall direct.

Amount of
wharfage.

SEC. 9. The following amounts shall be collected by the Wharf Master, for the landing of boats and for wharfage, on the articles designated on landing, or on any vehicle standing thereon, to wit:

For every steamboat, for twenty-four hours or less	\$2.00
For every flat boat lying at wharf twenty-four hours without discharge of cargo,.....	1.00
Every additional twenty-four hours or less,.....	.50
For every flat-boat using wharf or landing one year,.....	3.00
For every 1,000 feet lumber drawn out at the landing,.....	3
For every 1,000 lath, shingles or pickets,.....	10
For each wagon load of sand,.....	3
For each barrel of lime,.....	2
For each cord of wood, rails or posts,.....	5
For other articles not specified, per ton or less, at the discretion of the Committee on Grounds,..	40

And the said wharfage shall be considered due and pay-^{When due} able in advance, and any person refusing to pay in ad-
vance, shall not be permitted to use said landing.
Lumber shall be allowed to remain on the landing ten
days, and other articles three days; after which time
owners or consignees failing to remove lumber or other
articles, on the request of the wharf master, shall be
considered as violating this ordinance and be subject to
the penalties provided in section 10 of this ordinance.

SEC. 10. Any person who may violate any provision ^{Penalty.} of this ordinance shall forfeit and pay a fine of not less than ten, nor more than one hundred dollars, for each offense.

SEC. 11. The wharf master shall pay over to the ^{Wharf Master} _{to pay city.} Treasurer, every Saturday, the amount of money re-
ceived during the week.

SEC. 12. The wharf master shall receive, as com-^{Compensation} pensation for his services, ten per cent. of all the moneys collected by him.

SEC. 13. The wharf master shall be provided with ^{Office.} a suitable office, on or near the said landing, under the direction of the Committee on Public Grounds.

SEC. 14. The Committee on Public Grounds and ^{Lease of land-} _{ing.} Buildings are empowered to lease, until March next, and annually thereafter, such portion of the public grounds adjacent to the public landing, as will not interfere with the business of said landing.

SEC. 15. All ordinances, acts, or resolutions of the ^{Private} _{wharves.} City Council, by virtue or under pretense of which any private wharves, landings, or docks have been established or built, are hereby repealed, and it shall here-^{Repeal.} after not be lawful for the owner or owners of any pri-
vate wharf, landing, or dock, to charge, or collect, or receive wharfage from any steamboat, barges, or other vessel or water craft. Any person or company violat-
ing this section shall be liable for each offense to the penalty above provided, and boats, vessels, rafts, or other water craft landing at any other place than the

Penalty.

public wharves, landings, or places designated in this ordinance, shall nevertheless be liable to pay to the city the rates of wharfage hereinbefore designated.

And the owner, or master, or person in charge of any steamboat or other craft, or vessel or raft, who shall cause or allow the same to be landed at any private wharf, landing or dock, or at any other place or places than those designated and prescribed in this ordinance, shall be deemed guilty of a violation thereof, and subject for each offense, to the penalty prescribed in section 10 hereof.

Exception.

Provided, however, that this ordinance shall not be construed to prohibit the owner or master of any boat or craft from landing at his own wharf or dock with boats or rafts belonging to himself or to the person for whom the master is running or using such boat or raft.

Passed and approved September 24, 1866.

[NOTE.—Action of Council as to “reserved landing,” see *ante*, p. 98; decision of Supreme Court respecting, see p. 69.

As to wharves and docks and power over river, see pp. 69, 72.

CHAPTER LXXXV.

AN ORDINANCE relating to lumber yards within the fire limits.

[Incorporated in Chap. 24, Art. 3.]

CHAPTER LXXXVI.

AN ORDINANCE granting certain privileges to W. W. Kennedy.

Scales.

SECTION 1. That W. W. Kennedy shall have the right to establish and maintain a set of platform scales of hay, coal, etc., on the levee, between Brady and Main streets, at the following place:

Commencing forty-six feet west from the north-east

corner of the Levee Block, at the junction of Brady and Front streets, thence west twenty (20) feet, thence south twenty (20) feet, thence east twenty (20) feet, thence north twenty (20) feet to place of beginning.

SEC. 2. Said W. W. Kennedy shall have the right ^{Term.} to occupy said premises with said scales during the pleasure of the City Council, but the City Council shall not deprive the said Kennedy of said right till after three months' notice in writing.

SEC. 3. Said Kennedy shall pay into the City Treas- ^{Pay to city.} ury the sum of \$25 per annum for the use of said premises, payable annually in advance.

SEC. 4. Said W. W. Kennedy shall be a public ^{Public weigher.} weigher, and shall be subject and conform to the rules and regulations contained in Chapter ten (10) of Revised Ordinances, and to such rules and regulations as the City Council shall from time to time appoint.*

Passed and approved October 28, 1857.

CHAPTER LXXXVII.

AN ORDINANCE as to numbering buildings in fire limits. (See Chap. 24.)

CHAPTER LXXXVIII.

AN ORDINANCE for the formation and government of the fire department.

SECTION 1. The Fire Department of said city shall ^{who compose.} consist of a Chief Engineer, two Assistant Engineers, and as many Fire Wardens, Fire Engine men, Hosemen, Hook and Ladder men as or may from time to time be appointed by the City Council, as is hereinafter provided. The Aldermen shall *ex officio* be Fire Wardens.†

* See *ante*, Chap. 10.

† Duties of Fire Wardens, see Chap. 21.

Election, &c.

SEC. 2. The nomination of the Chief Engineer and Assistant Engineer shall be made by the firemen by ballot on the first Saturday in May of each year, and the persons receiving the greatest number of votes for the respective offices shall be thereupon entitled to a nomination to the City Council for appointment to such offices, such appointment to continue for one year or until the successors to each office shall be nominated, and by the City Council duly confirmed. Public notice of the time and place of each nomination shall be given to the Fire Department by the Chief Engineer, through one or more newspapers published in the city of Davenport. Whenever a vacancy shall occur in either of the offices of Chief Engineer or Assistant Engineers, the Engineer and the foremen of the Fire companies collectively, shall have power, and it shall be their duty to call a special election, and designate the time and place for holding the same, to the end, that a nomination pursuant to the provisions of this ordinance may be made to the City Council to supply such vacancy.

Chief Engineer. SEC. 3. The Chief Engineer shall in all cases of fire have the sole and absolute command and control over all the Engineers and other persons connected with the Fire Department.

It shall be the duty of the Chief Engineer to direct other Engineers to arrange the several fire engines in the most advantageous manner, and to cause them to be duly worked for the extinguishment of fires.

It shall also be the duty of the Chief Engineer to examine, twice in each year, into the number and condition of all fire engines, hose carriages, hose, and other apparatus connected therewith, and all engine houses, and other buildings used for housing fire apparatus, and report the same to the City Council once in each year, and oftener, if required by the City Council. He shall also report a list of all the members of the Fire Department, and the respective associations to which they belong.

He shall also report in writing an accurate list of

accidents by fire that may take place within the city, with the causes thereof, and the number and description of the buildings destroyed or injured, together with the names of the owners and occupants.

SEC. 4. The Chief Engineer shall receive for his ^{salary} services such annual salary as the City Council may prescribe; and before entering upon the duties of his office, he shall take and subscribe an oath or affirmation well and truly to perform such duties. He shall also execute a bond in the penal sum of five hundred dollars, with two sureties, to be approved by the Mayor, conditioned for the faithful performance of the duties of his office.

SEC. 5. Whenever any vacancy shall occur in the ^{Vacancy} office of the Chief Engineer, it shall be the duty of the senior Assistant Engineer to perform the duties of the office until the vacancy be filled. The senior Assistant ^{Assistant En-}
^{gineer.} Engineer (and in his absence the junior Assistant Engineer) shall exercise the duties of the Chief Engineer in his absence, and in general have control over the Fire Department subordinate to him.

SEC. 6. Whenever any repairs are required to keep ^{Repairs.} the fire engines and apparatus in good order, the Chief Engineer shall forthwith report the same to the Fire Department committee of the City Council.

SEC. 7. The Chief Engineer shall report to the City ^{Report to}
^{Council.} Council, the name of any member of the Fire Department who is reported to him by the foreman of the company of which he is a member, to be inefficient, unfaithful, intemperate, or otherwise unfit for duty, and the City Council may remove such person at pleasure.

SEC. 8. The Fire Wardens shall attend upon all ^{Fire Wardens.} fires occurring in the city, act as special policemen in guarding the property of citizens exposed by reason of fires, and perform such other duties as now or may hereafter be prescribed by the ordinances of the city. The Fire Wardens shall wear a badge of office upon

which shall be inscribed the words "Fire Wardens," and shall transfer them to their successors—said badge to be furnished by the city.

Duty of.

SEC. 9. It shall be the duty of the Fire Wardens to prevent the hose from being injured at fires, and to keep all idle and suspected persons at a proper distance from the fire, and from the vicinity. All persons are hereby enjoined to comply with the orders and directions of said Fire Wardens in the premises.*

Report of fore-man.

SEC. 10. The foreman of each fire company shall, on the first Monday of August, in each year, make out a report to the Chief Engineer, of the number, residence and occupation of all the members of his company, and also all misconduct of any member of his company.

Companies.

SEC. 11. The firemen shall be divided into companies, to consist of as many members as the City Council shall from time to time direct, to attend the fire engines, hose wagons, and hooks and ladders, and it shall be the duty of the firemen as often as any fire shall break out in the city, to repair immediately, upon the alarm, to their respective engines, hose wagons, hooks and ladders, and convey them to or near the place where such fire shall happen, unless otherwise directed by the Chief or other Engineer, and there in conformity with the directions given by the Chief Engineer or other Engineers, to work and manage said engines or apparatus and implements, with all their skill and power, and when the fire is extinguished they shall not remove therefrom but by the direction of an Engineer, and on such direction they shall return their respective hose wagons, engines, hooks and ladders, and other apparatus to their several places of deposit.

Disobedience.

SEC. 12. If any Assistant Engineer, Foreman, Assistant Foreman, or any other fireman having charge of any fire company, disobeys or refuses to obey any order

* Other duties of Fire Wardens see Chap. 21.

or direction of the Chief Engineer, he may for such offense be expelled from the Fire Department.

SEC. 13. It shall be the duty of all members of the ^{Duties.} Fire Department to prevent all persons from loitering in or about any house belonging to the department.

SEC. 14. No fire engine, hook and ladder, or hose ^{Removal of engine, &c.} cart, during any fire in this city, or any other place, or any report of fire, at any time, under any pretence whatever, shall be taken or removed out of its house, unless the Foreman or Assistant Foreman, or one of the Engineers, or at least two of the firemen of the company to which the same belongs, shall be present and consent thereto, under a penalty of ten dollars for every such offense, to be forfeited and paid by and received from any and every person aiding or assisting in such act.

SEC. 15. No fire engine, nor hook and ladder, nor ^{Sidewalk protected.} hose cart, shall, in going to or returning from fires, or at any other time, be run, driven, wheeled or placed upon any sidewalk, except by the special order of the Engineers, Foremen or Assistant Foremen of companies under a penalty of twenty dollars for each offense, to be forfeited and paid by every person so aiding or assisting in such act, to be recovered by the City Attorney, for the use of the corporation.

SEC. 16. Each fire company shall have power to ^{Foreman.} elect a Foreman and Assistant Foreman, to take charge of each piece of apparatus, under rules and regulations to be adopted by such company.

SEC. 17. Each of said companies may adopt such ^{Constitution and rules.} constitution, by-laws and rules for their regulation and government, subordinate to the ordinances of this city, as they may deem best calculated to accomplish the objects of their organization, and said companies may each elect such other officers besides Foreman and Assistant Foreman as may be required by their constitutions.

SEC. 18. The engines and other apparatus shall be ^{Engine house, &c.} kept in such place as the City Council shall provide and

designate, and it shall be the duties of the several companies to keep the same always in order and ready for immediate use.

Engine kept in city.

SEC. 19. No company shall be permitted to go with their engines or other fire apparatus beyond the limits of the city, unless it be to attend fires in adjacent cities, without the consent of the City Council.

Removal and destruction of buildings.

SEC. 20. The Engineer in command, or in the absence of both the Chief Engineer and his Assistants, the Mayor or any two Aldermen may direct the hook and ladder men to cut down and remove any building, erection or fence for the purpose of arresting the progress of any fire, and to the same end the Engineer, or any such person as may be in command at any fire, may with the advice and concurrence of two members of the City Council, blow up or cause to be blown up with powder or otherwise, any building or erection.*

Special limits.

SEC. 21. The Mayor, City Marshal, Fire Wardens, or such officers as may be in command of the police at any fire, may prescribe limits within which no person excepting those who reside therein, members of the Fire Department, and those admitted by order of the Mayor, Marshal, or some other officer of the police, or Fire Wardens, shall be permitted to come, and it shall be the duty of the police to aid in carrying out the provisions of this section.

Arrests.

SEC. 22. At any fire, and for twelve hours after its extinction, it shall be lawful for the Chief Engineer of the Fire Department, or the Assistant Engineer, or the Foreman of any fire company, or the Mayor, or any member of the police, to arrest, without warrant, any suspected person, or any person hindering or resisting such officer, or any fireman in the discharge of his duty,

*DESTRUCTION OF BUILDINGS AT FIRE.—Buildings may lawfully be destroyed to prevent spread of fire. 2 Kent Com., 238; 4 T. Rep., 790; 2 Cart., (Ind.), 35; 8 Met., 462, 465; 18 Wend., 126; 1 Zabrisk, (N. J.) 248.

And the city is not liable for the value of the building, unless made so by statute. 8 Met., 462, 465; 5 Cush., 269; 11 Cush., 483.

And the city of Davenport is not so made liable.

or refusing to obey such officer, or conducting in a noisy or disorderly manner, and to commit such person forthwith to jail, and every such person so committed shall remain until discharged upon trial and hearing before some court or magistrate of competent jurisdiction.

SEC. 23. In all matters connected with the extinguishment of fire or the protection of property, every person not a fireman, who shall be present at any fire in said city, shall be subject to the orders of the Chief Engineer and his Assistant, the Mayor, Fire Warden, Marshal, and other members of the police, and in case such person shall refuse to obey such orders, he shall forfeit and pay the sum of five dollars. Power of officers.

SEC. 24. It shall be lawful for the Chief Engineer, same. or his Assistant, or the Foreman of any fire company, or for any police officer, to request the aid of any drayman, with his horse and dray, or the driver of any wagon, with his team and wagon, or any citizen, inhabitant or bystander, in dragging or conveying any fire engine or other fire apparatus, and in working and using the same while at fires, and such driver, drayman, or teamster shall receive such compensation as the City Council may prescribe, and in case of refusal or neglect by such person to comply with such requisition, the offender shall, for every default forfeit and pay a penalty of not less than one dollar nor more than ten dollars.*

SEC. 25. There shall be two watchmen to attend the Watchmen at engine house engine house, each to be on duty twelve hours of each day, whose salary shall be fixed by the City Council, whose duty it shall be to clean, burnish and oil, and keep in order the engines, hose carts, hose and other apparatus, and to act as policemen in and about the premises, and they shall absolutely refuse admittance to all boys into said engine house, and shall arrest and lock up in the calaboose for trial all disorderly or drunken persons found around such engine house. The

*Sec. 24 amended as above printed October 14, 1865.

said watchman, after said engine house shall have been provided with a fire alarm bell, shall, upon the breaking out or alarm of fire, proceed at once to give the general alarm by ringing the alarm bell, under such rules as shall be prescribed by the City Council.

Other companies.

SEC. 26. There shall be no fire company in this city, or any association of firemen who are not organized under this ordinance and subject to its provisions.

City Council.

SEC. 27. All constitutions or by-laws passed by any fire company shall be approved by the City Council.

Hose protected.

SEC. 28. If any person shall knowingly or wilfully drive any wagon, cart, stage, coach, or other carriage or vehicle, over, upon, or across any engine hose or other hose while in use for the extinguishment of any fire, or while in use at any annual or other meeting of the Fire Department, or any fire engine or hose company, for inspection or exercise, such person or persons so offending shall, for each and every such offense, forfeit and pay a penalty of five dollars, unless permission be granted by the Chief Engineer, Assistant Engineer, Foreman or Assistant Foreman.

Action by fire company.

SEC. 29. Each fire company shall have power to commence a civil action before the Police Magistrate or any competent court, against any member of the company who fails or refuses to pay the dues, fines and penalties accruing from him to the company, of which he is a member, under the constitution and by-laws of the company. Said action may be in the name of the foreman for the benefit of the company.

Duties of company.

SEC. 30. No foreman of any piece of apparatus connected with the Fire Department, in returning from fires, alarms of fires, or from any other place to the engine house, shall permit the members of his company to haul or draw their engines, hose carts, hook and ladder carts, or other apparatus, at a greater speed than a walk, and for each violation of this section the foreman of each piece of apparatus, so offending, shall forfeit and pay a fine of five dollars, to be recovered in the

proper action for the benefit of the fire company of which he is a member.

SEC. 31. There shall be a general review of the Fire Department, engines and other fire apparatus, by the Mayor and Aldermen, annually, on the third Wednesday of May. It shall be the duty of the Chief Engineer to appoint a day and place, in the city, for such review, and give notice thereof to the Mayor and Aldermen, and also public notice to the Fire Department through one or more newspapers.

On the day appointed by the Chief Engineer, it shall be the duty of all persons belonging to any division of the Fire Department, to appear at the designated place fully equipped for such reviewing; and the different companies shall bring their respective engines and other fire apparatus. Any member of the Fire Department failing to appear, without sufficient excuse, at a review appointed as aforesaid, shall forfeit and pay, for the benefit of the company to which he belongs, not less than one nor more than five dollars.

SEC. 32. All ordinances and parts of ordinances in conflict with this ordinance, are hereby repealed.

Passed and approved February 3, 1858.*

CHAPTER LXXXIX.

AN ORDINANCE.

SECTION 1. Immediately after the commencement of any action at law or in equity against the city of Dav-^{to be notified of}suits, enport, it shall be the duty of the officer upon whom notice of the commencement of said action is served, to notify the City Attorney of the pending of such action.

Passed and approved February 17, 1858.

* FIRE ENGINE.—Contracts by city in relation to the Fire Department are within the scope of its power, and binding. See 19 Pick., 485.

CHAPTER XC.

AN ORDINANCE to provide for a City Armory.

City Armory.

SECTION 1. That the independent military companies of this city shall have the right to use, for the purpose of military instruction and drill, such rooms as the City Council shall provide, which rooms shall be called the city armory, and such rooms shall be furnished by and at the expense of the companies so using the same.

Same.

SEC. 2. All military companies of this city shall, when not in actual parade, service, duty or excursion, deposit and keep in said city armory all muskets, rifles and guns used or owned by said military companies.

Armorer.

SEC. 3. The Marshal of this city shall be, *ex officio*, the City Armorer, and shall keep the keys of such Armory, and shall at all times open the doors of such Armory upon the request of the Mayor of the city, or either of the commanding officers of the military companies of this city, except in times of riot, and then the Mayor alone shall have the right to command the opening or closing of the city armory.

Passed and approved March 3, 1858.

CHAPTER XCI.

AN ORDINANCE concerning lamps and lamp districts.

Lamp Districts.

SECTION 1. That the following limits, to-wit: All that part of the city situated within a distance of two hundred feet of the public lamps, which may be erected in any street or avenue, shall be deemed to be the lamp district of the division in which the same is situated. The limits of said district may be extended from time to time by the extension of public lamps, by a resolution of the City Council. Lamps shall in all cases be placed at proper distances in the districts, under the di-

rection of the Committee on Gas Lights, appointed by the City Council. When lamp districts are extended the provisions of this ordinance shall apply thereto.

SEC. 2. The City Council shall, on being petitioned ^{Special tax.} to do so by the owners of more than half the property to be taxed, annually levy on the real estate in the lamp districts, in the same manner as the general taxes are assessed, a sufficient tax to defray three-fourths the expense of erecting lamps and lighting the streets therein. *Provided*, that all that portion of such expense incurred in erecting new lamp posts shall in each case be equitably levied and assessed upon the real estate of the block opposite to the lamp post so erected on the same side of the street. It shall be the duty of the City Clerk to keep separate and accurate accounts of the expenditures in each district, and the money collected therein by tax, which shall be termed the "street lamp account," and whenever a tax shall be assessed upon the real estate of any lamp district, or upon the real estate of the block opposite, where new lamp posts may be erected, as aforesaid, the Clerk shall rule appropriate columns in the Collector's warrant for general taxes, for the entry and collection thereof, and the same shall be collected by the Collector with the same power as such general taxes.*

SEC. 3. Any person who shall carelessly or maliciously break, deface, or in any way injure or destroy any lamp or lamp post, in this city, shall forfeit the penalty of ten dollars for each offense, together with the expenses, cost and charges that may be incurred in repairing the injuries committed, to be recovered for the use and benefit of the treasury. ^{Lamp posts}
protected.

SEC. 4. Any person who shall climb upon, or hitch ^{Same.} any horse or any other animal to any public lamp post, or hang or place any goods or merchandise thereon, or place any goods, boxes, wood or other heavy material

*Sec. 2 amended as above printed September 24, 1866.

against the same, or who shall extinguish or cause to be extinguished, or light or cause to be lighted any of said lamps, unless duly authorized to do so by the proper authorities, shall forfeit and pay the penalty of five dollars for each offense.

*How assessed
and collected.*

SEC. 5. The assessment of taxes contemplated in this ordinance shall be made by the City Assessor, upon all real estate in the lamp district, in the same manner as the general annual assessment for city taxes is made, and said lamp taxes shall be levied and collected in like manner.

Passed and approved March 3, 1858.

CHAPTER XCII.

AN ORDINANCE as to rules and order of business.

SECTION 1. That the following shall be the rules and order of business for the City Council of this city :

MEETINGS OF THE COUNCIL.

Time of regular meetings. RULE 1. Regular meetings of the City Council shall, from and after December 1st, 1866, be held at half past seven o'clock P. M., on the first and third Wednesday of each month. Notices of special meetings shall be served by the Marshal on each Alderman personally, or by leaving the same at his usual place of abode. The Marshal shall have charge of the Council room, and give his attendance at the meetings of the Council.

*Special meetings. See ante,
p. 31.*

Marshal to attend Council and have charge of room.

ORDER OF BUSINESS.

Roll call.

Quorum defined.

RULE 2. At the hour appointed for the meetings, the Clerk shall proceed to call the roll of members, marking the absentees, and announce whether a quorum is present. If a quorum be present, the Council shall proceed to the business before it. Seven members, exclusive of the Mayor, shall be necessary to con-

stitute a quorum; less than a quorum may adjourn and compel the attendance of members.

The following shall be the order of business:

1st. The reading of the minutes of the proceedings ^{Order of busi-}
of the last meeting or meetings, amendment and ap-
proval of the same.

2d. The presentation of petitions and other commu-
nications.

3d. Reports of city officers.

4th. Reports of standing committees.

5th. Reports of select committees.

6th. Unfinished business of preceding meeting.

7th. Miscellaneous resolutions, motions, etc.

RULE 3. All questions relating to the priority of ^{No debate.} business shall be decided without debate.

DUTIES AND PRIVILEGES OF THE PRESIDENT.

RULE 4. The Mayor shall preserve order and de- ^{Mayor presides.} corum, and shall decide all questions of order, subject to an appeal to the City Council. He shall have the ^{Appeal.} casting vote on all questions upon which the City ^{Casting vote.} Council is equally divided, but not otherwise.

RULE 5. While the Mayor is putting the question ^{Decorum.} no member shall walk across or out of the Council room.

RULE 6. Every member, previous to his speaking, ^{Mayor to be ad-} dressed. shall rise from his seat, and address himself to the Mayor, and say "Mr. Mayor," but shall not proceed with his remarks until recognized and named by the Chair.

RULE 7. When two or more rise at once, the Mayor ^{Who shall speak.} shall name the member who is first to speak.

DUTIES AND PRIVILEGES OF MEMBERS.

RULE 8. When a member wishes to present a com- ^{Leave to re-} munication, petition or report, he shall rise in his place port, &c.
and address the Chairman in the usual form, and having briefly stated the subject of his communication or report, ask leave to present the same.

Limit on speaking. RULE 9. No member shall speak more than twice on the same general question, nor more than once on a previous question.

Calling to order. RULE 10. A member called to order while speaking, shall immediately cease speaking and sit down, unless permitted to explain. If there be no appeal, the decision of the Chair shall be conclusive; but, if the member appeal from the decision of the Chair, the City Council shall decide on the case without debate.

Decorum. RULE 11. While a member is speaking no member shall hold any private discourse, nor pass between the speaker and the Chair.

All shall vote, except, &c. RULE 12. Each member who shall be present when a question is stated from the Chair, shall vote thereon, unless he is directly interested in the question, in which case he shall not vote.

MOTIONS AND RESOLUTIONS.

Motion to be seconded and put in writing when required. RULE 13. No motion shall be put or debated unless it is seconded. When a motion is seconded, it shall be stated by the Mayor before debate, and every motion shall be reduced to writing, if required by the Mayor or any Alderman.

Withdrawal of motion. RULE 14. After a motion or resolution is stated by the Mayor, it shall be deemed to be in the possession of the City Council, but it may be withdrawn at any time before decision or amendment.

Name of Aldermen. RULE 15. In all cases where a resolution or a motion is entered on the minutes of the City Council the name of the member moving the same shall be entered also.

Ayes and nays required in passing ordinances, &c. RULE 16. In all cases of the adoption, repeal or amendment of an ordinance the ayes and nays shall be taken and entered on record. But a failure thus to enter them shall not invalidate the action of the Council. In all other cases, if any member requires it, and his motion is seconded, the ayes and nays on any question shall be taken and entered upon the minutes; but the ayes and nays shall not be taken, unless called for previously to any vote on the question. No ordinance

shall be adopted, or amended, or repealed, at the *same meeting* at which it is introduced, unless eight members of the Council shall vote in favor of such adoption, amendment or repeal.

RULE 17. When a question is under debate, the only motion in order shall be: 1st. To adjourn; 2d. The previous question; 3d. To lay on the table; 4th. To postpone indefinitely; 5th. To adjourn to a certain day; 6th. To refer; 7th. To amend; and such motions shall have precedence in the order herein arranged—the first three to be decided without debate.

ADJOURNMENT.

RULE 18. A motion to adjourn the City Council shall always be in order, except, 1st. When a member is in possession of the floor; 2d. While the yeas and nays are being called; 3d. When the members are voting; 4th. When adjournment was the last preceding motion; or 5th. When it has been decided that the previous question shall be taken.

RULE 19. A motion to adjourn, simply, cannot be amended; but a motion to adjourn to a given time, may be and is open to debate.

PREVIOUS QUESTION.

RULE 20. When the previous question is moved and put, it shall be in this form: "Shall the main question be now put?" If this is carried, all proposed amendments, and all further motions and debate shall be excluded, and the question is put without delay.

TO LAY ON THE TABLE.

RULE 21. A motion to lay a question on the table, simply, is not debatable, but a motion to lay on the table and publish, or any other condition, is subject to amendment and debate.

INDEFINITE POSTPONEMENT.

Postponement. RULE 22. When a motion is postponed indefinitely, it shall not be taken up again during the same meeting.

TO REFER.

Reference. RULE 23. A motion to refer to a standing committee shall take precedence of a similar motion for a special committee.

TO AMEND.

To amend. RULE 24. A motion to amend an amendment shall be in order; but to amend an amendment to an amendment shall not be entertained.

Same. RULE 25. An amendment modifying the intention of a motion shall be in order; but an amendment relating to a different subject shall not be in order.

Strike out and insert. RULE 26. On a motion to "strike out and insert," the paragraph to be amended shall first be read as it stands, the words proposed to be struck out, and those to be inserted, and finally, the paragraph as it would stand if so amended. (See Rule 40.)

RECONSIDERATION.

Reconsideration. RULE 27. A motion may be reconsidered at any time during the same meeting, or at the first meeting held thereafter. A motion for a reconsideration being once made and decided in the negative, shall not be renewed before the next meeting.

Same. RULE 28. A motion to reconsider must be made and seconded by members who voted in the majority, or by those who were absent and did not vote upon the motion to be reconsidered.

Same. RULE 29. No question shall be reconsidered more than once, nor shall a vote to reconsider be reconsidered.

COMMITTEES.

*Committees—
how appointed.* RULE 30. All standing committees shall be ap-

pointed by the Mayor, and all special committees shall be appointed by the Mayor, unless otherwise specially directed by the City Council.

RULE 31. All standing committees of the City Council shall be appointed by the Mayor annually, on entering upon the duties of his office; and the first person named shall be the chairman thereof.

The following shall be the standing committees : Standing Committees.

1. On Ordinances.
2. On Finance.
3. On Streets.
4. On Fire and Water.
5. On Grades.
6. On Printing.
7. On Police.
8. On Claims.
9. On Gas Lights.
10. On Public Buildings and Public Grounds.
11. On Licenses.
12. On Sidewalks.

RULE 32. The standing committees of the City Council shall consist of three members each.

SPECIAL COMMITTEES.

RULE 33. All special committees shall consist of three members each, unless some other number be specified; and the first person named shall be chairman.

RULE 34. On the acceptance of a final report from a special committee, the said committee shall be considered discharged without a vote, unless otherwise ordered.

JURISDICTION OF COMMITTEES.

RULE 35. All matters relating exclusively to the streets and alleys, shall be referred to the street committee, unless otherwise directed by the Council.

REPORTS OF COMMITTEES.

RULE 36. Standing and select committees, to whom Reports.

Requisites of.

references are made, shall in all cases report in writing the state of facts, with their opinion thereon.

RULE 37. All reports of committees shall be addressed "To the Mayor and Aldermen of the city of Davenport, in Council assembled;" they shall briefly describe the matter referred, and the conclusion to which the committee have arrived, which conclusion shall be summed up in the form of an order, resolution or recommendation.

DUTIES OF THE CLERK AND MARSHAL.

Clerk to forward and Marshal to deliver papers.

RULE 38. The City Clerk shall forward all the papers to the appropriate committees and officers, as early as the next day after the reference shall have been made; and it shall be the duty of the Marshal to deliver them.

Bills and claims.

RULE 39. All bills and claims against the city shall be referred to some committee, and shall lie over until the next meeting of the Council, unless the same shall have been examined by the appropriate committee and payment recommended by a majority of such committee, in which case bills and claims may be passed and allowed, without being referred, at the same meeting at which they are presented.

Resolutions and acts appropriating money.

RULE 39½. No resolution or other action of the City Council appropriating money, or involving the appropriation of money, shall be passed at the same session of the Council at which it is presented, unless by unanimous consent, but shall, unless such unanimous consent is had, be referred to some appropriate committee, who shall report at the next meeting of the Council.

Ordinances—how amended, &c.

RULE 40. In all proceedings to amend or change an ordinance, or section thereof, the proposed amendment shall contain the entire ordinance, or section thereof, to be amended or changed, and the former ordinance or section shall be repealed. In other words, an ordinance or section shall not be amended by striking out, insert-

ing or adding words ; but the former ordinance or section (as the case may be) shall be repealed, and the new one, as amended, written out in full and substituted in its place.

RULE 41. The foregoing rules may be temporarily suspended by unanimous consent of all members present; but shall not be repealed, altered or amended, unless by concurrence of two-thirds of all the Aldermen elected.

All acts, ordinances, resolutions and rules in conflict with these rules are hereby repealed.

Passed and adopted June 2, 1858. Amended September 24, 1866.

Passed and approved September 24, 1866 ; and Rules No. 39½ and 40 adopted November 7, 1866.

NOTE.—Charter gives Council power to determine the *rules* for its proceedings. See *ante*, p. 80.

CHAPTER XCIII.

AN ORDINANCE relating to the measurement of stone and brick masonry.

SECTION 1. That all stone or brick masonry done or performed by virtue of any contract, express or implied, with the city, shall be measured by the actual amount of work done, that is to say, brick work by the actual number of brick, and stone work by the actual number of feet in the building, culvert, or other structure, any custom to the contrary notwithstanding.

Passed and approved September 24th, 1866.

CHAPTER XCIV.

AN ORDINANCE authorizing the erection of hay scales on Harrison street, between Fourteenth and Fifteenth.

SECTION 1. That William Renwick, his heirs or as-

Scales authorized.

signs, are hereby authorized and empowered to erect hay or platform scales in front of his office, on Harrison street, between Fourteenth and Fifteenth streets.

How long.

SEC. 2. Said hay or platform scales may be kept on said street as long as it does not obstruct or interfere with the business thereof.

Adopted November 5, 1862.

CHAPTER XCV.

AN ORDINANCE to vacate and re-locate High street between Chestnut and Grove streets.

High street vacated.

SECTION 1. High street as designated in the plat of the city of Davenport, between the west line of Chestnut street and the west line of Grove street, be and the same is hereby declared vacant and discontinued as a street.

Re-located.

SEC. 2. High street be and is hereby declared re-located on said tract of land sixty-eight and one-third ($68\frac{1}{3}$) feet south of High street, in accordance with plat executed by W. D. Clark, City Engineer, to be used and continued as a street.

Passed and approved March 14, 1866.*

CHAPTER XCVI.

AN ORDINANCE to vacate and discontinue a street or alley in block 71, Le Claire's 5th Addition.

Alley vacated.

SECTION 1. WHEREAS, The property owners adjoining a street, or alley, forty feet wide, running from Iowa street to Le Claire street, on the south side of Market Place as designated on plat of sub-division of

*NOTE.—There was a preamble to this ordinance which is omitted in this reprint.

block seventy-one, in Le Claire's Fifth Addition to the city of Davenport, have filed their consent in writing that the first one hundred and sixty feet thereof east from Iowa street, be vacated and discontinued; Therefore, said one hundred and sixty feet east of Iowa street, by forty feet wide of said street or alley on south side of Market Place, as designated in said sub-division of block seventy-one as aforesaid, be and the same is hereby declared to be vacated and discontinued as a street or alley.

SEC. 2. That the above vacation shall be upon the ^{Condition.} express condition that John J. Burtis shall, at his own proper cost and expense, put down and finish, within thirty days from the passage hereof, a plank sidewalk not less than two inches thick by four feet wide, laid on strong pieces, along the north front of said Market Place, from Iowa to Le Claire street.

Passed and approved August 4, 1865.

CHAPTER XCVII.

AN ORDINANCE in relation to the City Cemetery of the city of Davenport.

SECTION 1. Any person who shall trespass upon said cemetery, by destroying, injuring or defacing any grave, vault, tombstone or monument, or any building, fence, tree, shrub, flower, or anything belonging to said cemetery, shall be deemed guilty of a breach of this ordinance, and upon conviction, pay a fine to the city of Davenport of not less than one nor more than one hundred dollars, and moresoever, may be sued in the name of the city for any damage sustained by such trespass.

SEC. 2. The City Sexton shall *ex officio* be a special ^{Sexton's duty.} policeman.

Passed June 23, 1865.

CHAPTER XCVIII.

AN ORDINANCE to appropriate funds arising from Weighers' certificates, licenses, and rents or incomes for public grounds or buildings.

Road fund.

SECTION 1. That all moneys arising from receipts for weighers' certificates, licenses, and rents or incomes from public grounds or buildings, are hereby set apart to, and shall be paid into and constitute a part of the road fund of the city.

Paying over of.

SEC. 2. It shall be the duty of the Clerk, City Collector, or other person who may legally receive monies due the city for weighers' certificates, licenses, and rents and incomes for the public grounds and buildings, to pay them to the City Treasurer into the street fund, and the City Treasurer shall receive and enter the same as road fund.

Not to be diverted.

SEC. 3. No moneys arising from any of the above sources shall be appropriated or paid on any other account than city orders upon the road fund.

SEC. 4. All ordinances or rules in contravention to this ordinance are hereby repealed.

Passed and approved July 11, 1866.

CHAPTER XCIX.

AN ORDINANCE relating to persons commonly called substitute brokers.

License re-
quired.

SECTION 1. That no substitute broker or brokers within the city of Davenport, from and after the passing of this ordinance, shall solicit, invite, or seek to induce any man or men to become substitutes for others in the military service of the United States, as volunteers or otherwise; nor shall such substitute broker or brokers, within the city of Davenport, solicit, invite or seek to induce any man or men, by placard, by public

advertisement, or by any other means whatever, to resort to them, to their places of business, or to any place or person, for the purpose of becoming substitutes or otherwise enlisting them into the service of the United States, without having first obtained a license therefor, as hereinafter provided. *Provided*, That ^{Proviso.} nothing in this ordinance shall prevent any person from providing a substitute for himself, nor shall prevent the citizens of Iowa from procuring such substitutes or volunteers through committees appointed by such citizens to act for them.

SEC. 2. The City Clerk is hereby authorized to issue ^{Fee.} licenses to substitute brokers in the city of Davenport, for the term of one year, upon the receipt from the City Marshal for one thousand dollars, being produced to him therefor by the person asking for such license. And the Clerk is authorized to collect a fee of one dollar for issuing said license.

SEC. 3. No more than one person shall be authorized ^{Only one to act under one license.} to act under one license.

SEC. 4. Any person who shall violate any provision ^{Penalty.} of this ordinance, on conviction thereof, shall forfeit and pay a fine to the city of Davenport of one hundred dollars for each offense.

SEC. 5. That the ordinance entitled "An ordinance ^{Repeal.} relating to persons commonly called substitute brokers," passed and approved January 4, 1865, be and hereby is repealed.

Passed and approved January 12, 1865.

[NOTE.—The validity of this ordinance admits of doubt, but it has not been repealed.] ^{J. F. D.}

CHAPTER C.

AN ORDINANCE for the regulation of weights and measures.

SECTION 1. That hereafter there shall be a regula-

Weights and
measures regu-
lated.

tion of weights and measures within this city, and the standard adopted by the State of Iowa shall be the test by which they shall be compared and determined.

Standards.

SEC. 2. The City Council, at the expense of the city, shall procure correct and approved standards, with their necessary sub-divisions, for the purpose of testing and proving the weights and measures of said standard used in the city.

Duties of In-
spectors and
Sealer defined.

SEC. 3. It shall be the duty of the Inspector and Sealer of weights and measures, at least once in every year to examine and test the accuracy of all weights and measures, scales, or other instruments or things used by any person for weighing or measuring any article for sale in said city of Davenport; to stamp with a suitable seal all weights and measures and scales so used, which he may find correct, and deliver to the owner thereof a certificate of their accuracy; to condemn all weights, measures and scales which he may find incorrect upon such inspection, and to cause the owner thereof to have them corrected and made conformable to said standard in the manner hereinafter provided, and any person refusing to exhibit any weights, measures or scales, or instruments for weighing or measuring, to said Sealer, for the purpose of examination and inspection, as aforesaid, or obstructing him in the performance of his duty, shall forfeit a penalty of not less than five dollars, nor more than twenty-five dollars, for each offense, recoverable before any court or Justice having jurisdiction of the same within the city.

Penalty.

Corrected and
sealed.

SEC. 4. It shall be the duty of said Inspector and Sealer of weights and measures to examine and put in good order, and seal, all weights, measures, beams and scales at the several places where the same are used; but, if they be found not conformable to the standard of the State, they shall be sent by the owner thereof to such place in the city as the Sealer may direct, for the purpose of being repaired and adjusted, and the same

shall be sealed within ten days after they may have been tested and condemned, and any person offending against the provisions of this section, shall, on conviction thereof before any Court of Justice of said city having jurisdiction, be fined in any sum not exceeding ^{Penalty.} twenty-five dollars.

SEC. 5. The Inspector and Sealer of weights and ^{Fees.} measures shall be allowed to receive the following fees of office for services rendered by him under this ordinance, viz: For inspecting and sealing platform scales of five thousand pounds and upwards, including weights, one dollar ; of less denominations, including weights, fifty cents each. For inspecting and sealing large beams weighing one thousand pounds and upwards, including weights, twenty-five cents ; of smaller denominations, fifteen cents each. Counter scales, including weights, fifteen cents. For comparing and sealing any measures, bushels, ten cents ; half-bushel, five cents ; less denominations, each three cents. For comparing and sealing wine measures, each three cents ; for comparing, inspecting and sealing cloth and board measures, each five cents ; for inspecting and testing the several scales of the city for the weighing of hay and coal, one dollar each.

SEC. 6. The Inspector of weights and measures shall ^{Expenses.} be entitled to charge and receive the fees as specified in this ordinance from the owner, and he shall, in every case where he may employ labor and material in making the same accurate, be entitled to a just compensation therefor.

SEC. 7. It shall not be lawful for the aforesaid Inspector to make the aforesaid charges for inspecting and testing weights, measures and scales, as aforesaid, oftener than once in each year, unless at the request of the owner, or if any person or persons shall complain of the inaccuracy of the scales, weights or measures, when he shall be entitled to his regular fees.

SEC. 8. No person shall make use of any weight,

Use of unsealed weights for bidden.

scale, measure or other instrument for weighing or measuring any article for sale in this city, until the same has been duly examined and sealed by the Sealer of weights and measures, under a penalty of not less than five nor more than twenty-five dollars, recoverable before any Court of Justice having competent jurisdiction in this city. All persons using weights, measures, scales or other instruments for measuring any article for sale in this city, which have been sealed, shall, upon application of the Sealer of weights and measures, allow the same to be examined, tested and sealed as herein provided, under a penalty of not less than five nor more than twenty-five dollars, for failing so to do, and any person or persons altering any weights measures or scales, causing the same to weigh or measure incorrectly, shall, on conviction thereof before any Justice of said city, be fined in any sum not exceeding one hundred dollars.

Penalty.

Register and report.

SEC. 9. It shall be the duty of said Sealer to make a regular register of all weights and measures, scale-beams and steelyards, or other instruments inspected by him, in which he shall state the names of the owners of the same, and whether they are conformable to the standard of the State. And it shall also be his duty to report to the City Council the names of all persons whose weights, measures, scale-beams or steelyards are incorrect, and to deliver a copy of his said register to the Clerk of the city.

Election of Inspector.

SEC. 10. The Inspector of weights and measures shall be chosen annually by the City Council on the first Wednesday of April, after the annual city election, and shall hold his office for the term of one year from the time of his appointment and until his successor is duly elected and qualified.

SEC. 11. There shall be chosen on the first Wednesday of December, 1862, by the City Council, an Inspector of weights and measures, to serve until an Inspector is duly elected and qualified in accordance with the provisions of section 10 of this ordinance.

SEC. 12. Complaints to the Inspector need not be in writing, and the name of the person complaining shall, if requested, be kept confidentially by the Inspector, unless upon the request of the Council. The report provided for in section 9 shall be published in the official paper of the city.

Adopted December 3, 1862, August 10, 1865. Sec. 12 passed September 24, 1866.

CHAPTER CI.

AN ORDINANCE in regard to persons carrying on the business commonly called gift enterprises.

SECTION 1. That all persons who hereafter carry on Licence required. in said city of Davenport the business which is commonly called gift enterprise, shall be required to pay into the city treasury, as a license therefor, the sum of five dollars per day, or fifteen dollars per week, or twenty-five dollars per month, or two hundred dollars per year, and in each case to the City Clerk one dollar fee for issuing such license.

SEC. 2. Any person violating any provision of this Penalty. ordinance shall pay for each offense a fine of not less than ten dollars and of not more than one hundred dollars.

Passed and approved December 14, 1864.

CHAPTER CII.

AN ORDINANCE in relation to gunpowder, designed to prevent fires and injuries to persons and property.

SECTION 1. It shall not be lawful for any person within the limits of the city of Davenport to keep any gunpowder, except in the manner following, to-wit: The head of a private family, for his own use, may keep not exceeding $6\frac{1}{4}$ pounds; thirty pounds may be kept How much may be kept, and by whom.

by retail merchants for retail, and one hundred pounds by wholesale merchants for wholesale, and quarrymen twenty-five pounds; *provided, however,* that the $6\frac{1}{4}$ pounds shall be kept in closed kegs or tin canisters. The retail merchant shall keep his so that it shall be secure and easily removed in case of fire, and the wholesale merchant shall keep that allowed to be kept by him in a fire-proof or zinc box, closely and tightly covered, and so that it can be easily removed in case of fire, and to the satisfaction and under the direction of the Marshal, or any fire warden of the city.

Penalty and
forfeiture.

SEC. 2. It shall be the duty of the Marshal to seize all powder kept contrary to this ordinance, file an information against the owner or possessor, and upon its being found that the powder was illegally kept, the owner shall be adjudged to pay a fine not exceeding one hundred dollars, and the powder thus illegally kept, shall be forfeited to the city, sold and the proceeds paid into the city treasury.

Passed and approved September 29, 1866.

CHAPTER CIII.

AN ORDINANCE in relation to vicious dogs and unruly animals.

Not to be at
large.

SECTION 1. All persons owning, or having charge of or control over unmuzzled dogs which attack or bite people, or owning or having control over cattle or other domestic animals which attack, gore, or injure people, are hereby required to keep them from running at large in the streets and other public places in the city.

Marshal's duty. SEC. 2. The Marshal, upon being satisfied that there are vicious dogs or unruly animals at large, shall, if practicable, notify in writing, (keeping a copy) the owner or person in control or charge of such animals to restrain the same from running at large, and he

may or may not, at his discretion, institute a suit for a violation of section one of this ordinance occurring before such notice is given.

SEC. 3. If satisfied that a dog is accustomed to seize or bite people, or is vicious, and has actually bitten one or more persons in the city, the Marshal may, if he finds such dog at large, kill the same without previous notice to the owner, or he may, if he sees fit, without killing the animal, notify the owner as provided in section two, and prosecute him for a violation of section one.

SEC. 4. Whoever violates section one shall be fined ^{Penalty.} not less than one nor more than five dollars. If the animal is found at large, after the notice given to the owner as provided in section two, the fine may be for any sum not exceeding twenty dollars.

Passed and approved September 24, 1866.

CHAPTER CIV.

AN ORDINANCE to regulate the running of cars on the streets of the city.

SECTION 1. No person under the age of sixteen ^{Minors not to jump on cars.} years, shall, within the city limits, seize, hang upon, or attempt to seize, hang upon, or get upon cars while the same are in motion in the streets of the city, and whoever does so is guilty of a misdemeanor and liable to be fined in a sum not exceeding five dollars for each offense; and the better to carry out the purpose of this ordinance, it is made the duty of the conductor of each railroad train, or other officer in charge of the same, to detail brakemen, or other employees or persons, as a special police force, to prevent boys and minors under the age above specified from boarding, seizing hold of, or getting upon cars when in motion, and if the railroad company conductor, or other officer in charge of the train, shall neglect to comply with this ordinance, they, and each of them shall be fined for each offense not ex-

Power to arrest. ceeding ten dollars. And any conductor or other officer of the train, or any other employee or person detailed to prevent minors from boarding the train as above provided, shall have power to arrest them, provided they insist on so doing after being warned, and when arrested may discharge them at the station or take them before the Mayor or Police Magistrate and file a complaint against them for a violation of this ordinance.

Rate of speed
on cars and
hand cars.

Penalty.

SEC. 2. The rate of speed of all cars, including hand-cars, shall not exceed six miles per hour, within the city limits, and a bell or bells shall, upon each train and upon each hand car, be kept continually ringing while passing through the city limits. And any railroad company shall, whenever directed by resolution of the City Council, station a flagman on at Brady and such other street crossings as the Council may direct. And any violation of this ordinance shall subject the railroad company, or conductor, or person in charge of the train or car, to a fine of not exceeding twenty dollars for each offense.

SEC. 3. A copy of this ordinance is directed to be mailed by the City Clerk to the Superintendent of the railroad company at Davenport, or delivered to him in person.

Passed and approved November 7, 1866.

CHAPTER CV.

AN ORDINANCE in relation to lamp posts, tree boxes, fences, and the posting of bills.

Posting bills,
defacing fences,
&c.,

SECTION 1. No person shall post any bill, or notice, or advertisement, placard, or other printed matter upon any public lamp post within the limits of the city, nor upon any tree box, fence or building where a notice or sign is conspicuously printed or posted forbidding it; nor shall any person whittle, scratch, write upon, deface

or in any manner injure any fence or tree box within the limits of said city.

SEC. 2. Whoever violates any provision of this ordinance shall be fined not exceeding five dollars for each offense. ^{Penalty.}

Passed and approved November 7, 1866.

CHAPTER CVI.

AN ORDINANCE to provide for filling vacancies in city offices.

SECTION 1. Whenever any vacancy shall occur in ^{Vacancies, how filled.} any city office, those of Mayor and Aldermen excepted, from sickness, absence from city, inability to act, death, resignation, failure to qualify, or other cause, and no special mode is provided as to filling the vacancy, such vacancy may be temporarily filled by the appointment of the Mayor; such appointee shall qualify and give bond the same as if he had been regularly elected or appointed, but such appointment shall be in force only until the office shall be regularly filled by appointment and confirmation or election in the usual manner, and until the successor shall qualify and enter upon the discharge of the duties of his office.

SEC. 2. All vacancies in the office of Mayor and ^{Same.} Alderman, and all other offices elective by the people, shall be filled by election, and special elections shall be ordered whenever necessary for that purpose.

Passed and approved November 7, 1866.

[*NOTE.—See ante, Chap. 73.*]

CHAPTER CVII.

AN ORDINANCE to prevent the breaking of lamps, windows, &c., and to prohibit the use of rubber gums.

SECTION 1. Every boy or other person is prohibited

Rubber guns,
&c., forbidden.

from using rubber guns in the streets and alleys of the city, and whoever by the use of said guns, or by throwing stones or otherwise, breaks any public lamps or windows, or does any other damage to property within the city limits, shall be deemed guilty of a misdemeanor, and fined not exceeding five dollars for each offense.

Parents liable.

SEC. 2. The parents or guardians violating this ordinance shall be liable to pay fines imposed for its violation.

Passed and approved November 7, 1866.

CHAPTER CVIII.

AN ORDINANCE in relation to the revised ordinances of 1866.

Name of the
Revision.

SECTION 1. The present revision of the ordinances herewith printed shall be known as the Revision of 1866.

Adoption.

SEC. 2. The ordinances reported to the Council at the special September meeting, A. D. 1866, by John F. Dillon, with the amendments made thereto by the Council, are hereby adopted, and declared to be in force, and ordered to be herewith printed and published in book form under the superintendence of the Printing Committee; and the ordinances thus printed shall be received in evidence without other or further proof.

Receivable in
evidence.

SEC. 3. Said books, when published, shall be put into the custody of the Clerk for safe keeping, and he shall be responsible for the preservation thereof. The Clerk shall furnish the Mayor and each member of the City Council and each ministerial and executive officer of the city with one copy of the Revised Ordinances, taking their receipts for the same; and the officers so receiving them are required to hand them over to their successors. The Clerk is directed to send one copy to

Clerk to take
care of.

each city in the State containing over five thousand inhabitants, and request a copy of their printed ordinances in return. And all books so received, and all others, shall be safely kept and preserved by the City Clerk. The Clerk is also directed to allow John F. Dillon to have twenty-five copies, if he shall so desire, for distribution, on behalf of the city, to the State and public libraries and judges in the State. The Clerk is also authorized to sell copies of the ordinances at one dollar per copy for bound and seventy-five cents for unbound, keeping account of the sales and paying over the proceeds to the City Collector, and taking his receipt for the same. The City Clerk shall deliver over said books to his successor in office, taking his receipt for the same, which receipt shall specify the number received by the incoming Clerk.

SEC. 4. Upon the publication of said ordinances, the ^{posting up.} City Clerk shall post up one copy in each ward of the city, in one of the most public places therein.

Passed and approved September 29, 1866.

AUTHENTICATION OF THIS REVISION.

I, D. B. NASH, Clerk of the city of Davenport, do hereby certify that, as directed by the last section of the foregoing ordinance, I did post up a true and correct copy of the foregoing and original Revised Ordinances for 1866, passed and adopted by the City Council, in each ward of said city, and the same and each of them have also been published in the official newspaper of the city; and the foregoing ordinances and each of them are correct copies of the original ordinances as passed by the City Council of the city of Davenport.

Given under my hand and the seal of said city, this 10th day of December, 1866.

D. B. NASH, City Clerk.

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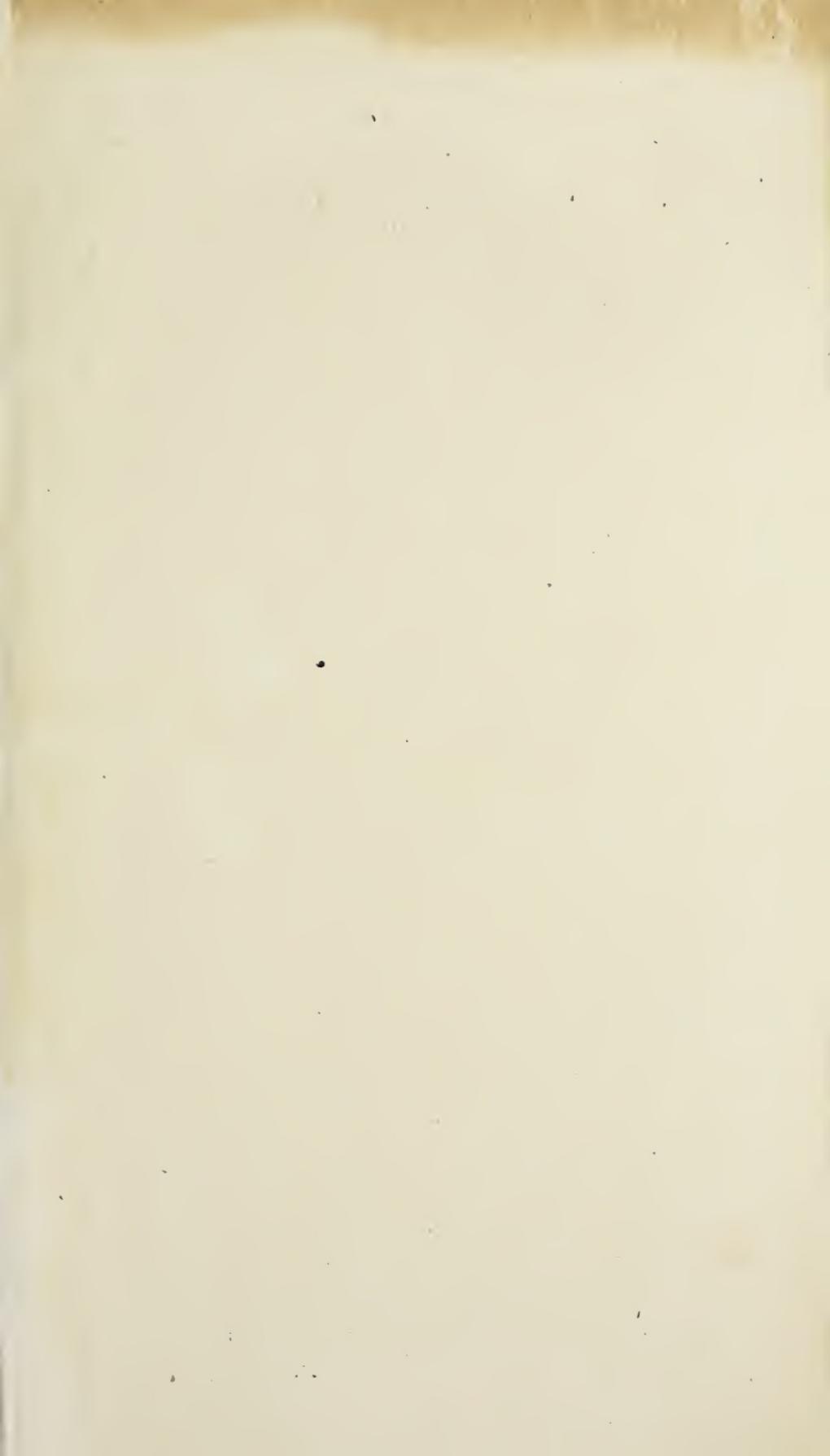
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